

EXHIBIT E

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OHIO

IN RE: :

FOE Aerie 2171 : Case No. 1342-05

Proceedings before Chairman Keith
McNamara, Vice Chair Robert A. Gardner, and
Commissioner Rocco J. Colonna, taken at the
Ohio Liquor Control Commission, 77 South High
Street, 19th Floor, Columbus, Ohio, on
Wednesday, October 19, 2005, at 1:00 o'clock
p.m.

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EXHIBIT

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APPEARANCES:
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On behalf of the Department
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By Mr. Kurt O. Gearhiser,

On behalf of the Permit
Holder.

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P R O C E E D I N G S

CHAIRMAN MCNAMARA: Would counsel
enter your appearances, please.
MR. LAMPKE: Matthew Lampke, Deputy
Attorney General, on behalf of the Department.
COMMISSIONER COLONNA: How do you
spell your last name, sir?
MR. LAMPKE: Lampke, L-a-m-p-k-e.
MR. GEARHISER: Kurt Gearhiser,
appearing on behalf of the permit holder,
Fraternal Order of Eagles 2171.
CHAIRMAN MCNAMARA: All right. Now,
to begin with, I'd like all people who are
going to be testifying as witnesses or who
might testify as witnesses or who even think
about testifying as a witness to please stand,
raise your right hand, and let's swear
everybody in at once.

Thereupon, the potential witnesses
were duly sworn by the reporter.

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MR. LAMPKE: Mr. Chairman, we're
here on page 56, Case No. 1342-05, in the
matter of FOE Aerie 2171.
I'd like to mark as State's
Exhibit A the notice of hearing, the
certificate of mailing, and the certified
return receipt.
MR. GEARHISER: No objection to
Exhibit A, Commissioners.
CHAIRMAN MCNAMARA: It will be
admitted.
MR. LAMPKE: Kurt, I don't know if
you have an objection to Exhibit B, which will
be the investigative report.
MR. GEARHISER: Oh, yeah.
CHAIRMAN MCNAMARA: Yes, you have an
objection?
MR. GEARHISER: I certainly have an
objection, and I've got a witness here who
will testify to it.
MR. LAMPKE: With that then, we can
just -- oh, and then finally State's
Exhibit E, which is the --
COMMISSIONER COLONNA: Is that C?

2 (Pages 2 to 5)

<p style="text-align: right;">Page 6</p> <p>1 MR. LAMPKE: E as in Edward, I'm 2 going a little bit out of order. I just 3 received a report today. It's the chemistry 4 report on the potability issue. 5 MR. GEARHISER: No objection to the 6 introduction or admission of State's 7 Exhibit E, which is the chemical analysis. 8 CHAIRMAN MCNAMARA: It will be 9 admitted. 10 MR. LAMPKE: With that, we would 11 move for a separation of witnesses so we can 12 call the enforcement agent. 13 CHAIRMAN MCNAMARA: All right. All 14 witnesses who have been sworn, out in the 15 hallway, and we'll let you know. 16 You're a witness, aren't you? 17 MR. ANDERSON: I'm the enforcement 18 agent, sir. 19 CHAIRMAN MCNAMARA: Okay. Just have 20 a seat. 21 Everybody out? 22 MR. LAMPKE: Yes. 23 ----- 24 ROBERT ANDERSON</p>	<p style="text-align: right;">Page 8</p> <p>1 those counties? 2 A. As of right now, eight. 3 Q. How are you as an agent informed of 4 a potential liquor permit violation? 5 A. It's done in several ways. 6 Basically somebody will call in a complaint to 7 our office, or an agent will receive a 8 complaint. It can be called in anonymously 9 through a police department or the local 10 authorities. Anyone can call in a complaint. 11 We fill out a Form 17, or our administrative 12 assistant fills out the Form 17, and it's put 13 on file as being on complaint. 14 Q. And roughly how many complaints do 15 you receive in a week or a month? 16 A. It varies. I would say five to six 17 a month, approximately. 18 Q. And what happens once you receive a 19 complaint? 20 A. The Form 17 is logged in our 21 complaint book for all agents to view. When 22 an agent is working in a certain area, like a 23 county or assigned to a county, he will go to 24 the complaint book, that agent will go to the</p>
<p style="text-align: right;">Page 7</p> <p>1 ----- 2 DIRECT EXAMINATION 3 BY MR. LAMPKE: 4 Q. Please state your name and 5 occupation for the record. 6 A. I'm Agent Robert Anderson. I work 7 for Ohio Department of Public Safety, 8 Investigative Unit. 9 Q. How long have you been in that 10 position? 11 A. Approximately 12 years. 12 Q. And describe your job duties in the 13 areas and the area that you cover. 14 A. I investigate crimes in Ohio that 15 involve liquor permit establishments, 16 including liquor laws, tobacco laws, and food 17 stamp fraud. 18 Q. And the area that you cover? 19 A. Oh, excuse me, Athens County; it's 20 all south and eastern Ohio. It's 18 counties. 21 Q. Do you know roughly how many liquor 22 permit premises are in those counties? 23 A. I couldn't say for sure. 24 Q. How many agents are assigned to</p>	<p style="text-align: right;">Page 9</p> <p>1 complaint book and view the complaints in that 2 county and visit those, do an investigation on 3 those at that time. 4 Q. And did Meigs County fall in the 5 month of December when you were conducting 6 investigations? 7 A. That's correct. I believe the 8 complaint was filed in June of 2004, and we 9 visited in December of that year. We were in 10 the area, the complaint was on for various 11 things, I'm not positive exactly what it was 12 on for, but we conducted an administrative 13 investigation at that time. 14 Q. And you're talking about the 15 investigation of FOE Aerie 2171? 16 A. That's correct. 17 Q. Okay. What did you do when you -- 18 how did you conduct the investigation for FOE 19 Aerie? 20 A. Myself and four other agents went 21 and visited the permit premises. We buzzed 22 the buzzer. We were allowed access. We went 23 in and properly identified ourselves to 24 individuals that were in charge there at the</p>

3 (Pages 6 to 9)

<p style="text-align: right;">Page 10</p> <p>1 time and advised them we were there to conduct</p> <p>2 an administrative inspection.</p> <p>3 Q. And what did you observe on entering</p> <p>4 the premises?</p> <p>5 A. Upon entering the premises, I</p> <p>6 observed what I believed were three electronic</p> <p>7 video slot machines that were located on the</p> <p>8 left-hand side of the bar; as you walk through</p> <p>9 the door, they were on the left, over on the</p> <p>10 left.</p> <p>11 Q. Were the machines located in the</p> <p>12 main room?</p> <p>13 A. Yes, the main bar area.</p> <p>14 Q. They were not located in a separate</p> <p>15 area of the facility?</p> <p>16 A. No, they were not.</p> <p>17 Q. Did you observe anyone playing</p> <p>18 these machines?</p> <p>19 A. I don't believe so.</p> <p>20 Q. Did you play the machines?</p> <p>21 A. Yes, I did.</p> <p>22 Q. What did you observe when you played</p> <p>23 the machines?</p> <p>24 A. I placed a dollar in this machine,</p>	<p style="text-align: right;">Page 12</p> <p>1 lose like \$.60 or I'd lose like \$.70, or I'd</p> <p>2 lose like \$.50.</p> <p>3 Q. So the machine would present you</p> <p>4 with \$.30 or \$.40 out of a \$1.00 wager that</p> <p>5 you made?</p> <p>6 A. Yes, yes.</p> <p>7 Q. Did you successfully complete the</p> <p>8 task each time you played it?</p> <p>9 A. Yes. This particular day, yes.</p> <p>10 Q. Okay. And then what did you do once</p> <p>11 you finished playing the machine?</p> <p>12 A. Like I said, I determined it to be</p> <p>13 an electronic video slot machine. We</p> <p>14 confiscated the monies, Agent Ginther, I</p> <p>15 believe, confiscated the monies. And we</p> <p>16 confiscated the machines as gambling devices.</p> <p>17 Q. How much money did you confiscate</p> <p>18 out of each machine?</p> <p>19 MR. GEARHISER: Objection. He just</p> <p>20 testified that Agent Ginther confiscated the</p> <p>21 money.</p> <p>22 CHAIRMAN MCNAMARA: If he knows.</p> <p>23 A. Out of the three machines total, it</p> <p>24 was approximately \$600: \$400 out of one</p>
<p style="text-align: right;">Page 11</p> <p>1 and upon playing it, in my experience I</p> <p>2 determined the machine to be an electronic</p> <p>3 gambling video machine. I've had several</p> <p>4 cases like this before, and it was my</p> <p>5 determination it was an electronic video slot</p> <p>6 machine.</p> <p>7 Q. Did you ever win a game that you had</p> <p>8 played on the machine?</p> <p>9 A. No.</p> <p>10 Q. And why not?</p> <p>11 A. I got the correct answers, but I won</p> <p>12 no money. Every time I played, I lost money</p> <p>13 although I got the correct answer. So I had</p> <p>14 no winnings.</p> <p>15 Q. Okay. You would play how much per</p> <p>16 game?</p> <p>17 A. Usually you bet \$1.00 or you can bet</p> <p>18 \$.50 or -- I can't remember the other bets. I</p> <p>19 think there's a \$4.00 bet you can do on it.</p> <p>20 But I played it and got correct answers and</p> <p>21 had no winnings, so.</p> <p>22 Q. Okay. What would the computer --</p> <p>23 what would the outcome of your play be?</p> <p>24 A. If I got a correct answer, I would</p>	<p style="text-align: right;">Page 13</p> <p>1 machine, like 60 out of another, 190 I think</p> <p>2 out of another.</p> <p>3 Q. Would that be reflected in your</p> <p>4 report?</p> <p>5 A. Yes. Evidence record document</p> <p>6 should be attached.</p> <p>7 Q. I'd like to show you State's</p> <p>8 Exhibit B in front of you; can you identify</p> <p>9 that document?</p> <p>10 A. Yes. This is my investigator's</p> <p>11 report.</p> <p>12 Q. Could you refer to the amount of</p> <p>13 money confiscated from each machine?</p> <p>14 A. Yes. Out of Machine No. 1 was --</p> <p>15 and we label them left to right. As you're</p> <p>16 facing the machine, they were labeled left to</p> <p>17 right. 194 out of Machine No. 1, I believe it</p> <p>18 was \$60 out of Machine No. 2, and \$402 out of</p> <p>19 the Machine No. 3.</p> <p>20 Q. And did you confiscate pay-out slips</p> <p>21 as well?</p> <p>22 A. I don't believe so. Maybe -- I'd</p> <p>23 have to refer to the report. Let me see.</p> <p>24 Yes. Yes, there was pay-out slips</p>

4 (Pages 10 to 13)

<p style="text-align: right;">Page 14</p> <p>1 from the machines confiscated.</p> <p>2 Q. Would that show evidence of income</p> <p>3 generated from this machine?</p> <p>4 A. Yes. Shows a profit.</p> <p>5 Q. And can you recall the specific date</p> <p>6 of the violation?</p> <p>7 A. December 9, 2004.</p> <p>8 Q. Did you also -- did you cite the</p> <p>9 permit holder for anything else other than</p> <p>10 electronic video gambling device?</p> <p>11 A. Yes. They were also cited for</p> <p>12 unsanitary conditions. They had liquor</p> <p>13 bottles that -- a liquor bottle that wasn't</p> <p>14 fit for potable consumption.</p> <p>15 Q. What did you find in the bottle?</p> <p>16 A. Insects and some debris or something</p> <p>17 like that, it looked like.</p> <p>18 MR. LAMPKE: At this time, I would</p> <p>19 move to admit State's Exhibit B into evidence.</p> <p>20 MR. GEARHISER: I'm going to object.</p> <p>21 We've got the investigating officer here.</p> <p>22 He's testified about the incidents that</p> <p>23 occurred.</p> <p>24 CHAIRMAN MCNAMARA: Officer, is this</p>	<p style="text-align: right;">Page 16</p> <p>1 Exhibit B.</p> <p>2 MR. LAMPKE: He has it in front of</p> <p>3 him.</p> <p>4 Q. If you would turn to the -- is there</p> <p>5 a description in there? Looks like what</p> <p>6 you've described as electronic video gambling</p> <p>7 device?</p> <p>8 A. Yes.</p> <p>9 Q. Why is that in that report?</p> <p>10 A. To tell you the truth, I really</p> <p>11 can't say for sure. All I know is this is the</p> <p>12 supervisor's standing operating procedures, to</p> <p>13 attach a description of electronic video</p> <p>14 gambling device to our reports when we</p> <p>15 confiscate this.</p> <p>16 Q. What part of that report is yours</p> <p>17 then?</p> <p>18 A. Everything. I put this together.</p> <p>19 Q. Okay, so you knew that was in there?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Okay. All right. Could you tell me</p> <p>22 the similarity between your report and what's</p> <p>23 on this machine? Because your report</p> <p>24 describes a poker machine, doesn't it, playing</p>
<p style="text-align: right;">Page 15</p> <p>1 a record that is kept in the ordinary course</p> <p>2 of business in your department?</p> <p>3 THE WITNESS: My investigative</p> <p>4 report, sir?</p> <p>5 CHAIRMAN MCNAMARA: Yes.</p> <p>6 THE WITNESS: Yes, it is.</p> <p>7 CHAIRMAN MCNAMARA: And is that an</p> <p>8 exact copy of your report?</p> <p>9 THE WITNESS: Yes, sir, it is.</p> <p>10 CHAIRMAN MCNAMARA: We're going to</p> <p>11 admit it for whatever value it may have.</p> <p>12 MR. GEARHISER: Can I see it,</p> <p>13 Commissioners?</p> <p>14 COMMISSIONER GARDNER: Excuse me?</p> <p>15 MR. GEARHISER: Can I see that?</p> <p>16 MR. LAMPKE: I'm sorry, I thought I</p> <p>17 gave you a copy.</p> <p>18 That's all the questions I have.</p> <p>19 CHAIRMAN MCNAMARA: Cross-exam?</p> <p>20 MR. GEARHISER: Yeah.</p> <p>21 -----</p> <p>22 CROSS-EXAMINATION</p> <p>23 BY MR. GEARHISER:</p> <p>24 Q. If I could have you, Agent, look at</p>	<p style="text-align: right;">Page 17</p> <p>1 games of cards? If you want to read it.</p> <p>2 A. Yeah, that's just one form, yes. It</p> <p>3 works on the same basis.</p> <p>4 Q. Okay. Well, where are there cards</p> <p>5 on here?</p> <p>6 A. There was no cards.</p> <p>7 Q. Okay. Do you bet on this particular</p> <p>8 -- do you draw cards on this?</p> <p>9 A. Do I draw cards?</p> <p>10 Q. Yeah.</p> <p>11 A. No.</p> <p>12 Q. Well, I guess I'm confused then.</p> <p>13 Why would a description of a poker machine be</p> <p>14 in your particular report concerning a machine</p> <p>15 that's called Tic-Tac-Fruit?</p> <p>16 A. Because poker plays several ways:</p> <p>17 It can be played with dice, it can be played</p> <p>18 with cards, it can be played with any various</p> <p>19 items. Poker does not mean cards.</p> <p>20 Q. Is this a poker machine? Does this</p> <p>21 play the game of poker?</p> <p>22 A. No.</p> <p>23 Q. So would you agree that there's</p> <p>24 really no reason for that to be in your</p>

5 (Pages 14 to 17)

<p style="text-align: right;">Page 18</p> <p>1 report?</p> <p>2 A. I think it gives some bearing on</p> <p>3 what the machine, type of machine, yes.</p> <p>4 Q. Well, let's go through it then. It</p> <p>5 says after a quarter is inserted into the</p> <p>6 machine. Does this machine accept quarters?</p> <p>7 A. No.</p> <p>8 Q. So you would say that's not</p> <p>9 exhibiting the same --</p> <p>10 A. Quarters is U.S. currency, and that</p> <p>11 machine accepts U.S. currency.</p> <p>12 Q. Right, I understand, but my question</p> <p>13 is, it doesn't accept quarters, correct?</p> <p>14 A. Right.</p> <p>15 Q. Are there five cards displayed on</p> <p>16 the screen?</p> <p>17 A. No.</p> <p>18 Q. Are you given a choice to keep five</p> <p>19 cards or getting rid of one of the cards?</p> <p>20 A. No.</p> <p>21 Q. Do you have the ability to draw a</p> <p>22 card?</p> <p>23 A. No.</p> <p>24 Q. Okay. Can you get a pair of aces</p>	<p style="text-align: right;">Page 20</p> <p>1 COMMISSIONER GARDNER: Okay.</p> <p>2 BY MR. GEARHISER:</p> <p>3 Q. Agent Anderson, did you play all</p> <p>4 three machines?</p> <p>5 A. No. I just played one.</p> <p>6 Q. Did you bring all three machines</p> <p>7 here today?</p> <p>8 A. No.</p> <p>9 Q. How do you know they're identical?</p> <p>10 A. Well, they appeared to be identical.</p> <p>11 Q. Do you know if they had the same</p> <p>12 graphics, Tic-Tac-Fruit; because there are</p> <p>13 different editions, do you know if they were</p> <p>14 the same ones?</p> <p>15 A. Yes.</p> <p>16 Q. Your testimony was that after</p> <p>17 playing one time, you determined it to be a</p> <p>18 gambling device, one block; that was your</p> <p>19 testimony here today?</p> <p>20 A. One session, yes.</p> <p>21 Q. You said one play.</p> <p>22 A. All right, well, whatever, but I'm</p> <p>23 talking about one session. I played it a few</p> <p>24 times.</p>
<p style="text-align: right;">Page 19</p> <p>1 like your report indicates here, on this</p> <p>2 machine?</p> <p>3 MR. LAMPKE: I would object at this</p> <p>4 time. The agent has testified that it's just</p> <p>5 a description of a gambling device, it's not</p> <p>6 this machine in particular.</p> <p>7 CHAIRMAN MCNAMARA: I think that's</p> <p>8 obvious.</p> <p>9 MR. GEARHISER: I won't ask any more</p> <p>10 questions, Commissioners. I would just ask</p> <p>11 that that page or the entire report be thrown</p> <p>12 out. If we are looking at a report that this</p> <p>13 officer prepared and his supervisor prepared,</p> <p>14 then I would certainly think somebody would</p> <p>15 have reviewed it before it got to the stage in</p> <p>16 front of the Liquor Control Commission. But</p> <p>17 I'll raise that objection at the end of the</p> <p>18 hearing.</p> <p>19 COMMISSIONER GARDNER: There were</p> <p>20 three machines?</p> <p>21 THE WITNESS: Yes, sir.</p> <p>22 COMMISSIONER GARDNER: All three of</p> <p>23 the machines are identical?</p> <p>24 THE WITNESS: Yes.</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. Okay. So it was more than just one</p> <p>2 play?</p> <p>3 A. Yes.</p> <p>4 Q. How many times did you play?</p> <p>5 A. I don't recall.</p> <p>6 Q. Two times?</p> <p>7 A. Probably, since I'm guessing, I'll</p> <p>8 say six or seven times.</p> <p>9 Q. Okay. So after six or seven plays</p> <p>10 with the machine, you knew that it was a slot</p> <p>11 machine?</p> <p>12 A. In my experience, yes, I determined</p> <p>13 it to be a video gambling slot machine.</p> <p>14 Q. Have you gone to any school to</p> <p>15 determine slot machines or skill-based</p> <p>16 amusement machines?</p> <p>17 A. Yes, I have.</p> <p>18 Q. All right. What schools have you</p> <p>19 gone to?</p> <p>20 A. I went to a school in Las Vegas,</p> <p>21 Nevada; it was a gambling school.</p> <p>22 Q. And what was it called?</p> <p>23 A. I can't remember the course exactly.</p> <p>24 It was gambling for electronic video gaming</p>

6 (Pages 18 to 21)

<p style="text-align: right;">Page 22</p> <p>1 machines, and they talked about the gaming 2 commission and all that. Just a small portion 3 of it was machines. 4 Q. Okay. What was the rest of it? 5 A. Cheats and gambling cheats, and laws 6 about different places that gamble and stuff 7 like that. 8 Q. And how long ago did you go to that 9 class? 10 A. Approximately five years ago. 11 Q. Did they give you any information 12 about Ohio law? 13 A. No. 14 Q. And did they give you any 15 information -- well, since it was five years 16 ago, the law has changed, essentially, since 17 then, hasn't it, in Ohio concerning gambling? 18 A. Yes, that's correct. 19 Q. Now, you said a small portion of it 20 was on machines? 21 A. Um-hmm. 22 Q. Are we talking about a week's 23 seminar and it was only a day, or are you 24 talking about a day --</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. But you didn't bring Form 17? 2 A. No, because I usually don't bring my 3 complaint form to any case. 4 Q. Okay. Why not? 5 A. It's just not our standard practice. 6 Q. All right. You're based in the 7 Athens district office? 8 A. Yes. 9 Q. How far is Athens to Meigs County, 10 through Pomeroy? 11 A. I'm not sure mileage or anything. 12 Q. Twenty miles? It's one county away, 13 right? 14 A. Yes. 15 Q. You just head down 33? 16 A. Yes. 17 Q. Take a right on Route 7 and you're 18 right there? 19 A. Yes. 20 Q. All right. Nobody in the Athens 21 district office went to Meigs County from the 22 date of sometime in June until December? 23 A. Oh, I have no way of knowing that. 24 Q. I guess what I'm getting to is,</p>
<p style="text-align: right;">Page 23</p> <p>1 A. Yes, a day. 2 Q. And did they cover skill-based 3 amusement machines? 4 A. No. They strictly stuck to 5 electronic video gambling machines. Or 6 will-based machines. The old-time One-Armed 7 Bandits. 8 Q. I think you used the term 9 "Form 17"? 10 A. Yes. 11 Q. Do you have your Form 17 here with 12 you? 13 A. No, I do not. 14 Q. Were you subpoenaed to be here 15 today? 16 A. Yes. 17 Q. Were you subpoenaed to bring all the 18 documents relating to this case? 19 A. I didn't -- I don't recall what it 20 said on the subpoena. 21 Q. Do you normally bring all the 22 documents here relating to the case, to the 23 Commission hearings? 24 A. Yes.</p>	<p style="text-align: right;">Page 25</p> <p>1 when did you decide to go down there on that 2 particular day six months after the complaint 3 was made? 4 A. We were working -- we were supposed 5 to meet a police department down there to work 6 on something else, and while I was in the area 7 working for them, we decided to visit other 8 complaints also. 9 Q. Okay. Can you tell me a little bit 10 about the complaint? Was it a Columbus 11 district office complaint, I mean a 12 headquarter complaint, or did it come into 13 your district headquarters? 14 A. I'm not sure. I can't say. I'm not 15 sure. 16 Q. I thought you looked at the 17 complaint? 18 A. Yes, I did. 19 Q. Does it say that on the complaint 20 form, usually? I mean, in my experience it 21 does. 22 A. I mean, it says whether it's -- 23 yeah, who filed the complaint. 24 Q. Yeah.</p>

7 (Pages 22 to 25)

<p style="text-align: right;">Page 26</p> <p>1 A. Yeah, where the complaint generated</p> <p>2 from?</p> <p>3 Q. Yes?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. It does say that but you just</p> <p>6 don't recall?</p> <p>7 A. Right.</p> <p>8 Q. All right. Do you know who made the</p> <p>9 complaint?</p> <p>10 A. No.</p> <p>11 Q. You don't have any idea if it was a</p> <p>12 male or female?</p> <p>13 A. No.</p> <p>14 Q. I take it it must have been an</p> <p>15 anonymous complaint then, there was no name</p> <p>16 attached to it?</p> <p>17 A. Oh, I have no idea. We usually are</p> <p>18 not in the practice of putting names on it</p> <p>19 even if somebody leaves one.</p> <p>20 Q. And this wasn't one where somebody</p> <p>21 came into the office, apparently?</p> <p>22 A. I don't know.</p> <p>23 Q. You don't know. So you don't know</p> <p>24 anything about the complaint?</p>	<p style="text-align: right;">Page 28</p> <p>1 A. No.</p> <p>2 Q. All right. So sometime in June a</p> <p>3 call comes in or somehow an anonymous</p> <p>4 complaint comes to the Athens district office?</p> <p>5 A. Um-hmm.</p> <p>6 Q. And six months later you're down in</p> <p>7 Athens and you're going to visit that</p> <p>8 location?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Did you check to see if the</p> <p>11 Eagles had a liquor license before you went</p> <p>12 down there?</p> <p>13 MR. LAMPKE: Objection, relevance.</p> <p>14 MR. GEARHISER: Well, I want to see</p> <p>15 why he's going down there. The whole point of</p> <p>16 this questioning is the fact that the</p> <p>17 Regulation 79 indicates that the Commission</p> <p>18 and/or a court of competent jurisdiction can</p> <p>19 determine whether or not the investigation</p> <p>20 conducted by the agents meets the standard of</p> <p>21 reasonable suspicion, and I need to determine</p> <p>22 that not only for this Commission but for any</p> <p>23 possible appeal that may be made by either</p> <p>24 myself or some other agency.</p>
<p style="text-align: right;">Page 27</p> <p>1 A. I did not take the complaint.</p> <p>2 Q. Okay. So you don't know if the</p> <p>3 person who made the complaint was reliable?</p> <p>4 A. No.</p> <p>5 Q. So what was the -- you mentioned</p> <p>6 something, and I think when we were down in</p> <p>7 Meigs County you indicated to me that you</p> <p>8 thought the complaint might have been drug</p> <p>9 related but you weren't sure. And I know that</p> <p>10 was maybe out in the hallway, so do you recall</p> <p>11 at all today what the complaint was about?</p> <p>12 A. No, I don't.</p> <p>13 Q. Okay. So you reviewed a Form 17</p> <p>14 sometime in December of an anonymous complaint</p> <p>15 that came in sometime in June, you don't even</p> <p>16 know when?</p> <p>17 A. June 2004.</p> <p>18 Q. How do you know it was June 2004?</p> <p>19 A. Because I do recall the date that it</p> <p>20 came in.</p> <p>21 Q. Okay. You mean you remember seeing</p> <p>22 the date that was written on Form 17?</p> <p>23 A. Yes.</p> <p>24 Q. But you didn't take the call?</p>	<p style="text-align: right;">Page 29</p> <p>1 CHAIRMAN MCNAMARA: I've forgotten</p> <p>2 the question now.</p> <p>3 MR. GEARHISER: Do you have a liquor</p> <p>4 permit, I believe, was the question.</p> <p>5 CHAIRMAN MCNAMARA: Okay. You can</p> <p>6 answer that.</p> <p>7 A. Okay. On the Form 17 it's indicated</p> <p>8 whether it's illegal sales and the type of</p> <p>9 permit they have on there, if it's a permit.</p> <p>10 If they didn't have a permit, one of the</p> <p>11 complaints would have been illegal sales. All</p> <p>12 right. We knew that wasn't the case. I do --</p> <p>13 well, I knew that wasn't the case.</p> <p>14 Q. So we know it wasn't illegal sales?</p> <p>15 A. That's correct.</p> <p>16 Q. Did you check to see if they had had</p> <p>17 a license to conduct charitable gambling</p> <p>18 before you went down there?</p> <p>19 A. No, I did not. Not me personally.</p> <p>20 Q. Do you know if they have a license</p> <p>21 to conduct charitable gambling?</p> <p>22 A. No, I do not. Actually I believe</p> <p>23 they do, because they did have tip tickets</p> <p>24 there, and they were legal, so they do.</p>

8 (Pages 26 to 29)

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1 Q. While you were there and they had
2 tip tickets, did you check to see if they had
3 a license?
4 A. I believe they showed me
5 documentation, some type of documentation on
6 that. I can't recall if it was a license or
7 whether it was the proper paperwork or not.
8 Q. But you were shown something and
9 that led you to believe that they had a
10 license?
11 A. Yes.
12 Q. All right. So had you ever seen
13 this machine before this investigation?
14 A. I can't remember if it was -- I've
15 had contact with this machine three times.
16 Q. Okay.
17 A. All right. And I don't know what
18 order.
19 Q. Okay. If I would tell that you this
20 was the only -- this was the second of the
21 citations issued by the Department of Public
22 Safety, would that be the point that this is
23 probably the first time you saw it?
24 A. Probably, I guess.

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1 Q. So you've never seen this before.
2 Did you ever see material on this, on
3 Tic-Tac-Fruit? I mean, your district was sent
4 a whole pamphlet on Tic-Tac-Fruit and I just
5 wondered if you'd ever personally seen it?
6 A. Yes, I have.
7 Q. So you'd read the information before
8 you went down there?
9 A. I'm not sure it was before or after.
10 Q. Okay. But you have seen the
11 information?
12 A. Yes, part of it, yes.
13 Q. All right. You indicated, I think,
14 in your testimony that you had no winnings?
15 A. That's correct.
16 Q. Okay. Now, you -- but you answered
17 the question correctly each and every time?
18 A. Yes.
19 Q. So you won some money each and every
20 time, you just did not win more money than the
21 money you used to play the machine; would that
22 be correct?
23 A. No.
24 Q. All right. You put a dollar in?

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1 A. Um-hmm.
2 Q. And you won \$.40?
3 A. No.
4 Q. You put a dollar in and the machine
5 would have registered that you answered the
6 game correctly?
7 A. Yes.
8 Q. And won a certain amount of money?
9 A. I don't recall what the machine
10 says.
11 Q. You just recall what you did?
12 A. I recall what happened, yes.
13 Q. All right, let's go over to the
14 machine. Can you step over to the machine,
15 please.
16 Is this on so that it can be played?
17 MR. LAMPKE: I don't know. Our
18 expert is going to testify about the machine
19 and its play.
20 THE WITNESS: The only way I know
21 how to get this thing to work is to put money
22 in it, so.
23 MR. GEARHISER: Could you just press
24 the play button, see if it works.

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1 THE WITNESS: There's no credits,
2 no points.
3 MR. GEARHISER: If we can get your
4 expert in here to put credits on the machine.
5 MR. LAMPKE: I would object at this
6 time. The witness is not a gambling expert.
7 We have an expert to testify about play on the
8 machine, and Mr. Gearhiser is trying to turn
9 him into an expert and he's a fact witness
10 here today.
11 MR. GEARHISER: I'm just trying to
12 find out whether he won or lost money, and
13 apparently he can't tell me, and he's just
14 testified --
15 THE WITNESS: Well, I can tell you,
16 I lost money.
17 MR. GEARHISER: Excuse me. And the
18 other thing is, he's testifying that he knew
19 after six or seven plays that this was an
20 illegal device. Now, he may not be an expert
21 but he's entitled to his opinion, and I'd like
22 to ask him to play this machine, and I think
23 I'm certainly entitled to that. If the
24 machine doesn't play and it can't play here in

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1 front of this Commission, then, frankly, I'm
2 not sure that there's any violation.
3 CHAIRMAN MCNAMARA: Have you got
4 somebody that can make it play?
5 MR. GEARHISER: Yes. We will have
6 witnesses, but they probably won't get here
7 today, because this hearing, I'm sure, will go
8 on.
9 CHAIRMAN MCNAMARA: Oh, you are?
10 MR. GEARHISER: Well, my
11 understanding was that we would probably take
12 10 or 12 hours to complete this hearing. I
13 don't know how long it's going to take, but it
14 will take a substantial period of time.
15 CHAIRMAN MCNAMARA: Who did you have
16 that understanding with?
17 MR. GEARHISER: Well, that's been my
18 statement to the Commission, that we have a
19 number of witnesses, the State has a number of
20 witnesses, and as early as January of this
21 year I informed them that if we had a hearing
22 on this, because of the number of witnesses we
23 had, we would probably need a day or two of
24 testimony for this.

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1 MR. LAMPKE: At this rate, I would
2 tend to agree, but that's why I'm objecting
3 and getting to relevant aspects of the
4 testimony.
5 CHAIRMAN MCNAMARA: Yeah, I think
6 we'll do this in order, let this witness
7 testify as to what he knows.
8 MR. GEARHISER: Okay. Thank you,
9 Commissioners.
10 BY MR. GEARHISER:
11 Q. When you entered the premises, you
12 indicated that you identified yourself to an
13 employee?
14 A. Yes.
15 Q. All right. By looking at your
16 report, it's also indicating that you
17 identified yourself and announced that you
18 were going to conduct an administrative
19 inspection; is that correct?
20 A. That's correct.
21 Q. All right. Administrative
22 inspections are conducted pursuant to
23 Regulation 4301:1-1-79; is that correct?
24 A. That's correct.

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1 Q. All right. So when you entered the
2 premises, you did not ask for a search
3 warrant, did you, you didn't apply for a
4 search warrant?
5 A. No, we did not.
6 Q. And you seized this property without
7 getting a search warrant?
8 A. That's correct.
9 Q. Are you aware that the liquor agents
10 don't have the authority to seize property for
11 forfeiture proceedings without a search
12 warrant on club property, on private club
13 property? If you don't know --
14 A. Yeah, I don't know.
15 Q. Okay. You indicated that you knew
16 the law changed in July of 2003?
17 A. Well, I'm not sure when it changed.
18 Q. But you knew it changed?
19 A. Yes.
20 Q. All right. If I were to tell you it
21 changed in July of '03, does that sound about
22 right?
23 MR. LAMPKE: Objection, again, Your
24 Honor. This is a fact witness, not a legal

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1 witness or an expert.
2 MR. GEARHISER: I'll withdraw that
3 question.
4 BY MR. GEARHISER:
5 Q. Let me get back to the question I
6 was asking you concerning the machine. You
7 played it six or seven times?
8 A. Yes.
9 Q. You won each and every time you
10 played?
11 A. Yes.
12 Q. Excuse me, you correctly solved the
13 puzzle each and every time?
14 A. Yes.
15 Q. When you correctly solved the
16 puzzle, what occurred?
17 A. It says that that's correct or
18 something like that, or something of that
19 nature, and then it gave me an amount of like
20 \$.40, which was \$.60 less than my wager.
21 Q. Okay, that's what I'm getting to.
22 Okay, I probably wouldn't have had to have you
23 step up here if I --
24 Okay, so when you correctly answered

<p style="text-align: right;">Page 38</p> <p>1 or solved the puzzle, you received something</p> <p>2 or the machine indicated that you would</p> <p>3 receive something?</p> <p>4 A. It took \$.60 away from me or \$.70</p> <p>5 away from me or -- if you bet \$1.00 and you</p> <p>6 get back \$.40, all right, you lose \$.60. You</p> <p>7 bet \$1.00 you get back \$.70, you lose \$.30.</p> <p>8 Q. On skill-based amusement machines --</p> <p>9 have you played other skill-based amusement</p> <p>10 machines? Do you know what -- withdraw the</p> <p>11 question.</p> <p>12 Do you know what a skill-based</p> <p>13 amusement machine is?</p> <p>14 A. I'm familiar with what --</p> <p>15 Q. Skee-Ball?</p> <p>16 A. Yeah, Skee-Ball, pinball.</p> <p>17 Q. All right. With pinball, you put</p> <p>18 \$1.00 in, you play the game, you get nothing</p> <p>19 back?</p> <p>20 A. That's correct.</p> <p>21 Q. You lost \$1.00, correct?</p> <p>22 A. I knew what I was getting.</p> <p>23 Q. What were you getting?</p> <p>24 A. Amusement. My personal amusement.</p>	<p style="text-align: right;">Page 40</p> <p>1 value?</p> <p>2 A. Of prizes, yes. I don't know what</p> <p>3 the value of the prizes are per ticket per how</p> <p>4 much money I put in, so I can't --</p> <p>5 Q. If you put \$10.00 in, do you ever</p> <p>6 think you'd get \$10.00 worth of prize value</p> <p>7 back?</p> <p>8 A. Like I said, I do not know the value</p> <p>9 of the prizes.</p> <p>10 Q. No, I'm just asking you, as you've</p> <p>11 played it.</p> <p>12 A. I can't determine the value of the</p> <p>13 prize.</p> <p>14 Q. Okay. Do you know what the</p> <p>15 requirements are for a skill-based game; do</p> <p>16 you know how to comply with a skill-based</p> <p>17 game?</p> <p>18 A. No, not exactly.</p> <p>19 Q. So you're a liquor agent and you're</p> <p>20 to determine the difference between a</p> <p>21 skill-based game and an illegal machine, slot</p> <p>22 machine?</p> <p>23 A. No, that's not correct. My</p> <p>24 determination is to decide whether something</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. When you play Skee-Ball, you play</p> <p>2 the ball, I guess, correct?</p> <p>3 A. Um-hmm.</p> <p>4 Q. You try to get it in a large hole,</p> <p>5 small hole, the smallest hole?</p> <p>6 A. Um-hmm.</p> <p>7 Q. When you correctly do something in</p> <p>8 Skee-Ball, what do you get, tickets?</p> <p>9 A. Yeah, usually, at most places, yes.</p> <p>10 Q. And you can play Skee-Ball all night</p> <p>11 long and you get this bushel-basket full of</p> <p>12 tickets and you go up and you get a teddy</p> <p>13 bear?</p> <p>14 A. Yes.</p> <p>15 Q. You would never in Skee-Ball get the</p> <p>16 amount back in prizes that you've paid for in</p> <p>17 money to play the game, would you?</p> <p>18 A. I don't know. I don't know the</p> <p>19 value of the prizes.</p> <p>20 Q. Have you ever played Skee-Ball?</p> <p>21 A. Yes.</p> <p>22 Q. Have you ever won any prizes?</p> <p>23 A. I won tickets, like you said.</p> <p>24 Q. All right. Would those have any</p>	<p style="text-align: right;">Page 41</p> <p>1 is an illegal gambling device.</p> <p>2 Q. Okay. If I told you that the</p> <p>3 difference between a legal and an illegal</p> <p>4 gambling device is, if something is 51 percent</p> <p>5 chance, it's illegal, and 49 percent skill,</p> <p>6 versus 51 percent skill and 49 percent chance.</p> <p>7 That's the difference between a slot machine</p> <p>8 and a skill-based amusement machine. Do you</p> <p>9 know that, or do you have no knowledge of</p> <p>10 that?</p> <p>11 A. Yeah, I'm familiar with that.</p> <p>12 Q. All right. What percent skill is</p> <p>13 this game? Is there any skill in this game?</p> <p>14 MR. LAMPKE: Objection, again, Your</p> <p>15 Honor. This witness is a fact witness, he</p> <p>16 didn't do a diagnostic, we have an expert</p> <p>17 coming in to testify as to just that very</p> <p>18 issue.</p> <p>19 CHAIRMAN MCNAMARA: I think the</p> <p>20 value of his testimony would be minimal, but</p> <p>21 if he has an opinion, he can express it.</p> <p>22 THE WITNESS: Do you want my</p> <p>23 opinion?</p> <p>24 MR. GEARHISER: I'll withdraw the</p>

11 (Pages 38 to 41)

<p style="text-align: right;">Page 42</p> <p>1 question.</p> <p>2 BY MR. GEARHISER:</p> <p>3 Q. Can cash be paid out on a</p> <p>4 skill-based amusement machine?</p> <p>5 A. I haven't thought about this.</p> <p>6 CHAIRMAN MCNAMARA: If you don't</p> <p>7 know, just say you don't.</p> <p>8 A. I don't know. It's possible, I</p> <p>9 know.</p> <p>10 Q. Does the machine you played involve</p> <p>11 a task? Do you have to do something?</p> <p>12 A. Yes.</p> <p>13 Q. All right. What did you have to do?</p> <p>14 Besides putting money in?</p> <p>15 A. It plays a game similar to</p> <p>16 tic-tac-toe, I guess.</p> <p>17 Q. Okay. There's nine squares?</p> <p>18 A. Yes.</p> <p>19 Q. In the six that you played, did you</p> <p>20 ever have an automatic winner; did the machine</p> <p>21 ever give you an automatic winner?</p> <p>22 A. I don't understand the question.</p> <p>23 Q. All right. Did you get three in a</p> <p>24 row without having to do something on the</p>	<p style="text-align: right;">Page 44</p> <p>1 A. I had to pick a square, a wild</p> <p>2 square, any square.</p> <p>3 Q. And when you did that, what</p> <p>4 happened?</p> <p>5 A. And then that's when it tells you</p> <p>6 whether you got correct answers or incorrect</p> <p>7 answers.</p> <p>8 Q. And each and every time you did that</p> <p>9 you got correct answers?</p> <p>10 A. That's correct.</p> <p>11 Q. And were given some value but</p> <p>12 something less than \$1.00, we know that?</p> <p>13 A. Something less than my wager.</p> <p>14 Q. Correct, which was either \$.50 or</p> <p>15 \$1.00, I think you testified?</p> <p>16 A. Yes.</p> <p>17 Q. All right. So would you say that</p> <p>18 you actively participated in that game to make</p> <p>19 it play? You had to touch the screen, you had</p> <p>20 to actively do something?</p> <p>21 A. Yes.</p> <p>22 Q. You just can't put money in, walk</p> <p>23 away, and money spit out of the machine?</p> <p>24 A. No.</p>
<p style="text-align: right;">Page 43</p> <p>1 machine?</p> <p>2 A. I don't recall.</p> <p>3 Q. Okay. Did you have to do something</p> <p>4 to the machine to activate it? How did you</p> <p>5 get it to start?</p> <p>6 A. Put money in it.</p> <p>7 Q. Okay. Then what did you do?</p> <p>8 A. And then I believe you push the</p> <p>9 button to start the wheels or start the timer</p> <p>10 or whatever it is. It's got a timer on it.</p> <p>11 Q. But a picture comes up on the</p> <p>12 screen?</p> <p>13 A. Right.</p> <p>14 Q. And what's the picture, a</p> <p>15 tic-tac-toe board?</p> <p>16 A. Well, it could be that. Or what I</p> <p>17 thought it was was an electronic video slot</p> <p>18 machine board.</p> <p>19 Q. Okay. Comes up with nine symbols?</p> <p>20 A. Yes, that's correct.</p> <p>21 Q. And then you had to do something; is</p> <p>22 that correct?</p> <p>23 A. Yes.</p> <p>24 Q. What did you do?</p>	<p style="text-align: right;">Page 45</p> <p>1 Q. All right. And if you put money</p> <p>2 into the machine and pressed the play button</p> <p>3 and did nothing, do you know what would</p> <p>4 happen? Do you know if you would</p> <p>5 automatically lose?</p> <p>6 A. No, I don't know.</p> <p>7 Q. Okay. You said you won each time</p> <p>8 you played?</p> <p>9 A. Yes.</p> <p>10 Q. This time; but other times when</p> <p>11 you've played it, apparently you have lost?</p> <p>12 A. I got the wrong answer.</p> <p>13 Q. Okay, that's what I'm saying, excuse</p> <p>14 me.</p> <p>15 A. Incorrect answer.</p> <p>16 Q. Okay. So sometimes you picked the</p> <p>17 correct location and at a later date when</p> <p>18 you've tested this machine or done something</p> <p>19 else on it, sometimes you picked the incorrect</p> <p>20 square?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. So do you believe you</p> <p>23 controlled, you yourself, you as a player</p> <p>24 picking a square, controlled whether you were</p>

12 (Pages 42 to 45)

<p style="text-align: right;">Page 46</p> <p>1 going to be correct or incorrect?</p> <p>2 A. I don't control anything. I only</p> <p>3 control one square. The other nine or other</p> <p>4 eight, excuse me, are chosen at random.</p> <p>5 Q. I understand that. But in that one</p> <p>6 that you control, do you have to do it?</p> <p>7 A. That one square, yes.</p> <p>8 Q. Do you know that three, four months</p> <p>9 before you picked up this machine the</p> <p>10 Department of Public Safety was asked to</p> <p>11 review this machine? Do you know that or not?</p> <p>12 A. No.</p> <p>13 Q. You said something about pay-out</p> <p>14 slips, you confiscated pay-out slips?</p> <p>15 A. Yes.</p> <p>16 Q. Are those in your report?</p> <p>17 A. You mean copies of them?</p> <p>18 Q. Yes, I'm sorry.</p> <p>19 A. No.</p> <p>20 Q. Okay. Why aren't they in your</p> <p>21 report?</p> <p>22 A. Because I've given them to the</p> <p>23 evidence officer.</p> <p>24 Q. Do you have a copy of them in there?</p>	<p style="text-align: right;">Page 48</p> <p>1 label is on it.</p> <p>2 Q. And that was labeled by you, or by?</p> <p>3 A. Agent Ginther, I believe.</p> <p>4 MR. GEARHISER: Okay. No further</p> <p>5 questions.</p> <p>6 CHAIRMAN MCNAMARA: Redirect?</p> <p>7 MR. LAMPKE: I'll try to be brief.</p> <p>8 - - - - -</p> <p>9 REDIRECT EXAMINATION</p> <p>10 BY MR. LAMPKE:</p> <p>11 Q. Were you subpoenaed to be here? Did</p> <p>12 you actually receive a subpoena from either</p> <p>13 the Department or the permit holder?</p> <p>14 A. No.</p> <p>15 Q. When playing Skee-Ball, do your</p> <p>16 points go up based on the amount of skill you</p> <p>17 use to play the game?</p> <p>18 MR. GEARHISER: Objection.</p> <p>19 CHAIRMAN MCNAMARA: If he knows, he</p> <p>20 can answer.</p> <p>21 MR. GEARHISER: Okay.</p> <p>22 A. I don't --</p> <p>23 BY MR. LAMPKE:</p> <p>24 Q. Did you receive more tickets based</p>
<p style="text-align: right;">Page 47</p> <p>1 A. No.</p> <p>2 Q. Okay. You indicated that the</p> <p>3 pay-out slips showed that money was made?</p> <p>4 A. That's the only reason why they</p> <p>5 would be confiscated.</p> <p>6 Q. Well, did you confiscate them, or</p> <p>7 did somebody else confiscate them?</p> <p>8 A. I can't recall who actually -- Agent</p> <p>9 Ginther took all the evidence at the scene,</p> <p>10 all right?</p> <p>11 Q. Is he here today?</p> <p>12 A. When it was found --</p> <p>13 Q. Is Agent Ginther here?</p> <p>14 A. No. But who it was found by, I</p> <p>15 can't be for sure.</p> <p>16 Q. Is this the same machine that you</p> <p>17 confiscated?</p> <p>18 A. Yes, one of the same.</p> <p>19 Q. No, I mean is it the same one?</p> <p>20 A. Yeah, out of the three, yes, that is</p> <p>21 one of them.</p> <p>22 Q. You guys usually initial that or put</p> <p>23 something on there?</p> <p>24 A. Yeah. Well, we label it, yes. The</p>	<p style="text-align: right;">Page 49</p> <p>1 on the higher points that you get?</p> <p>2 A. I believe so. It's been a while</p> <p>3 since I played.</p> <p>4 Q. Okay. You were asked questions</p> <p>5 about Skee-Ball?</p> <p>6 A. Yes, I believe so.</p> <p>7 Q. On this machine, when you use the</p> <p>8 same application of skill, do you get the same</p> <p>9 result?</p> <p>10 MR. GEARHISER: Objection. If I</p> <p>11 couldn't ask questions about certain things,</p> <p>12 they've got to bring their expert in, then I'm</p> <p>13 not sure exactly why Mr. Lampke should be able</p> <p>14 to.</p> <p>15 MR. LAMPKE: That's fine, I'll</p> <p>16 withdraw the question. With that, nothing</p> <p>17 further then.</p> <p>18 CHAIRMAN MCNAMARA: Any recross?</p> <p>19 MR. GEARHISER: No recross.</p> <p>20 CHAIRMAN MCNAMARA: Any questions by</p> <p>21 the Commission?</p> <p>22 Thank you very much, Officer.</p> <p>23 THE WITNESS: All right.</p> <p>24 MR. LAMPKE: Mr. Riedthaler.</p>

13 (Pages 46 to 49)

<p style="text-align: right;">Page 50</p> <p>1 - - - - -</p> <p>2 WILLIAM RIEDTHALER</p> <p>3 being previously sworn, testifies</p> <p>4 and says as follows:</p> <p>5 - - - - -</p> <p>6 DIRECT EXAMINATION</p> <p>7 BY MR. LAMPKE:</p> <p>8 Q. Can you please state your name and</p> <p>9 your occupation.</p> <p>10 A. William Allen Riedthaler. Presently</p> <p>11 I'm working instructing at Tiffin University.</p> <p>12 Q. Can you please describe your formal</p> <p>13 education.</p> <p>14 A. Formal education, graduated from</p> <p>15 high school, went to Cuyahoga Community</p> <p>16 College, Associate's of Science in Law</p> <p>17 Enforcement. Then went to Kent State</p> <p>18 University, received a Bachelor of Arts in</p> <p>19 Criminal Justice studies and Public Safety</p> <p>20 Administration. Then went to Baldwin-Wallace</p> <p>21 and have an MBA.</p> <p>22 Q. And what was your major field of</p> <p>23 study?</p> <p>24 A. Health care.</p>	<p style="text-align: right;">Page 52</p> <p>1 written that.</p> <p>2 I'm a certified instructor and an</p> <p>3 advanced instructor recognized by the Ohio</p> <p>4 Police Officers Training Council, and my</p> <p>5 certificate number is 35.</p> <p>6 Q. Have you developed any other</p> <p>7 expertise in the area of gaming or gambling</p> <p>8 devices?</p> <p>9 A. Originally, I started my police</p> <p>10 career with the Cleveland -- law enforcement</p> <p>11 career with the Cleveland Police Department.</p> <p>12 I was assigned to undercover vice activities</p> <p>13 in which we went into liquor and nonliquor</p> <p>14 establishments to enforce gambling laws. We</p> <p>15 made seizures at that time. The devices that</p> <p>16 would serve the haunt, devices were bingo card</p> <p>17 machines, these were pinball machines that</p> <p>18 didn't have flippers, they had dual metering</p> <p>19 and had knock-off devices.</p> <p>20 During that same period of time, the</p> <p>21 draw poker machines came out in 1980, and</p> <p>22 which I was involved in many of the seizures</p> <p>23 around the state and testifying as it relates</p> <p>24 to how the machines operated and how they</p>
<p style="text-align: right;">Page 51</p> <p>1 Q. And have you received informal</p> <p>2 education on gambling devices, gambling</p> <p>3 machines?</p> <p>4 A. I received formal and informal.</p> <p>5 Formal being is that I received training from</p> <p>6 the Internal Revenue Service, when the</p> <p>7 Coin-Operated Gambling Act stamped a</p> <p>8 two-and-a-half percent excise on the actual</p> <p>9 slot machines, they used to come to individual</p> <p>10 police departments and then train the</p> <p>11 policemen on the devices.</p> <p>12 I then attended the FBI's gambling</p> <p>13 course in Quantico, Virginia. I also attended</p> <p>14 college in California relating to</p> <p>15 coin-operated gambling devices.</p> <p>16 I also have been published in the</p> <p>17 area of slot machines and have one book, and</p> <p>18 another part of a book on carnival frauds that</p> <p>19 involves coin-operated gambling devices.</p> <p>20 I wrote the course material that all</p> <p>21 officers in the state of Ohio are trained</p> <p>22 from; in other words, there's a basic training</p> <p>23 that all police officers in the state receive.</p> <p>24 One section of that is gambling, and I have</p>	<p style="text-align: right;">Page 53</p> <p>1 awarded the cash pay-out.</p> <p>2 Q. Have you testified -- I'm sorry.</p> <p>3 A. Yes, several hundred times.</p> <p>4 Q. As an expert on gambling devices?</p> <p>5 A. Yes, I have.</p> <p>6 Q. Have you ever been deemed an expert</p> <p>7 to testify on gambling devices before the</p> <p>8 Liquor Commission?</p> <p>9 A. Yes, I have. I then was involved in</p> <p>10 the seizures of the instant bingo machines</p> <p>11 that were prevalent around the state in the</p> <p>12 late 1990s, early 2000s. And I was very</p> <p>13 involved in the newer machines that are</p> <p>14 presently out in the market, and I perform an</p> <p>15 analysis on the machine, determine how it</p> <p>16 operates, how much is wagered on the machine,</p> <p>17 for police departments.</p> <p>18 Q. Before you is Department's Exhibit</p> <p>19 C; can you identify that document?</p> <p>20 A. This is a copy of my curriculum</p> <p>21 vitae.</p> <p>22 Q. Can you speak into the microphone.</p> <p>23 A. Yes. This is a copy of my -- it's</p> <p>24 about a three-week-old -- it's older, it's</p>

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<p style="text-align: right;">Page 54</p> <p>1 about three or four months old, curriculum 2 vitae. 3 MR. LAMPKE: At this time, I would 4 move that Exhibit C into evidence and offer 5 Mr. Riedthaler as an expert on gambling 6 devices. 7 CHAIRMAN MCNAMARA: Do you care to 8 voir dire him? 9 MR. GEARHISER: I do not, 10 Commissioners. 11 CHAIRMAN MCNAMARA: All right. You 12 may proceed. 13 BY MR. LAMPKE: 14 Q. Are you familiar with the machine 15 called Tic-Tac-Fruit? 16 A. Yes, I am. 17 Q. How so? 18 A. There are four different versions. 19 I've looked the at all four versions, three of 20 which the State has seized. And the fourth 21 one I looked at was involved when another 22 police department had the device. 23 Q. Have you conducted an examination of 24 the Tic-Tac machine at issue here,</p>	<p style="text-align: right;">Page 56</p> <p>1 it out. 2 THE WITNESS: Does it pull out? 3 COMMISSIONER COLONNA: Yeah. 4 THE WITNESS: Maybe that's a little 5 easier on everybody. 6 A. The machine does not operate without 7 the insertion of money, so the first 8 requirement is that you have to put money into 9 the machine. There's a dollar bill insert 10 that accepts -- that would accept from one, 11 two, five, ten, twenty, and up to fifty 12 dollars at one time, or a single dollar bill. 13 We're going to put one dollar into the 14 machine. 15 What you'll notice is that when I 16 put the money in the machine, it recorded one 17 dollar in the points area. 18 Inside the machine there are two 19 types of metering systems: One is an 20 electronic, that I'm going to be bringing up 21 shortly. The second one, this mechanical 22 metering system that records the money that 23 goes into the machine, there are two separate 24 meters, and one that records the money that is</p>
<p style="text-align: right;">Page 55</p> <p>1 Tic-Tac-Fruit? 2 A. Yes, I have. 3 Q. Is that machine identified to your 4 right as being in the room? 5 A. There were actually -- it is one of 6 the machines, correct. 7 Q. Did you generate a report based on 8 your review of that machine? 9 A. Yes, I did. 10 Q. Handing you State's Exhibit D -- or 11 Department's Exhibit D in front of you; can 12 you identify this document? 13 A copy for each of the 14 Commissioners. 15 A. Yes. This is a copy of that report. 16 Q. Can you please describe your 17 analysis of that machine? 18 A. If I could, it may be easier if I 19 could walk over to the machine, if that's not 20 objectionable? 21 Q. I might have to hold the microphone 22 for you. 23 A. Can I take this microphone? 24 COMMISSIONER COLONNA: You can take</p>	<p style="text-align: right;">Page 57</p> <p>1 taken out of the machine, or paid out of the 2 machine. 3 If you look at the bottom, there are 4 different amounts that I can play at one time, 5 or wager: \$.50, \$1.00, \$2.00, and \$4.00. At 6 present I only have \$1.00 in the machine, or I 7 can either play \$.50 or \$1.00 into the 8 machine. 9 There is a bonus value. There's a 10 spinner locating the bonus value, has 11 \$2,647.56 assigned to it. The spinner value 12 has 12. 13 Based on how much you wager, for 14 example, if we were to wager \$.50, this value 15 changes in direct proportion to the amount you 16 wager. So the more you wager, the higher 17 dollar amount you wager, the more you could 18 win, or you've increased the amount you could 19 win. 20 Q. What is the bonus value when you 21 wager \$.50? 22 A. \$330.94. Conversely, if we were to 23 play \$4.00, it would be \$2,647.56 I would be 24 playing for, if I had the one combination that</p>

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<p style="text-align: right;">Page 58</p> <p>1 would award that.</p> <p>2 There is a replay award schedule</p> <p>3 inside the machine, and it tells you the</p> <p>4 value. If I were to get three titanium bars,</p> <p>5 I would receive that award. If I were to</p> <p>6 receive three spinners, I would receive an</p> <p>7 unknown dollar amount, and that's based on how</p> <p>8 much money is taken from the play and put into</p> <p>9 the spinner area as well as the flip area.</p> <p>10 Then there are defined -- and we're going to</p> <p>11 call it a replay award schedule; they refer to</p> <p>12 it as a winning prize schedule.</p> <p>13 If you were to get three bells, you</p> <p>14 would receive \$20.00; three plums, \$4.00;</p> <p>15 three, we're going to call them oranges,</p> <p>16 \$1.20; three lemons, \$.80; three cherries,</p> <p>17 \$.40. That's on a \$4.00 bet.</p> <p>18 Q. So on a \$4.00 bet, the bottom four</p> <p>19 redemption values, you would not make --</p> <p>20 there's no opportunity to obtain higher than</p> <p>21 the amount you wagered?</p> <p>22 A. That's correct. That's correct,</p> <p>23 unless the capabilities -- and we're going to</p> <p>24 talk about the number of lines you receive,</p>	<p style="text-align: right;">Page 60</p> <p>1 called a win tier finite table.</p> <p>2 The machine, when you put your</p> <p>3 machine in, you decide what you want to wager.</p> <p>4 When you place that wager, you start the game.</p> <p>5 It selects how many lines it's going to allow</p> <p>6 you to have as a winner. When you play this</p> <p>7 game, there is a winner capability every time</p> <p>8 that you play. There's a possibility.</p> <p>9 So let's just say you put in the</p> <p>10 money, it selects one line. It then goes to</p> <p>11 the second area and then says how much is that</p> <p>12 line worth. And this is totally done randomly</p> <p>13 by the machine; the player has no input in</p> <p>14 that selection.</p> <p>15 If you were to picture this bottom</p> <p>16 block as -- if you were to have break-open</p> <p>17 tickets, on the top of that break-open ticket</p> <p>18 box is usually what's referred to as a cut</p> <p>19 card. That cut card says there's going to be</p> <p>20 so many dollar winners, so many that has this</p> <p>21 value, so many that has this value, so many</p> <p>22 that has this value, going down until there</p> <p>23 are no -- and usually what it says on the</p> <p>24 break-open ticket, there's so many nonwinners</p>
<p style="text-align: right;">Page 59</p> <p>1 and I'm going to be covering that in a little</p> <p>2 bit, but I just wanted to let you see how the</p> <p>3 reward play schedule works.</p> <p>4 Then what I'm going to do is change</p> <p>5 this to \$.50 and then go back to that same</p> <p>6 schedule. You will see that the winning</p> <p>7 prize, the largest winning prize that you can</p> <p>8 obtain is \$330.94, all the way down to \$.05 if</p> <p>9 you were to get the three cherries. So you</p> <p>10 have different values based on the amount of</p> <p>11 money that you wager as well as the</p> <p>12 combinations that could appear on the screen.</p> <p>13 Now what I'm going to do is sort of</p> <p>14 close this off, and then electronically I'm</p> <p>15 going to throw a switch in the back of the</p> <p>16 machine. That's going to allow us to get into</p> <p>17 the setup mode of the machine and how it's set</p> <p>18 up.</p> <p>19 What we would start with would be</p> <p>20 the stats menu. And what's referred to as</p> <p>21 finite stats. Press this button, you'll see</p> <p>22 that there are two blocks on the far</p> <p>23 right-hand area. One is referred to as a line</p> <p>24 combo finite table. The second is what's</p>	<p style="text-align: right;">Page 61</p> <p>1 in the box.</p> <p>2 In this case, every one of these is</p> <p>3 a winner, but it is randomly selected, once</p> <p>4 this winds. So if it selected four lines, it</p> <p>5 would randomly select four within this. It</p> <p>6 cannot exceed the number.</p> <p>7 Okay, so in this case, there are</p> <p>8 60,000 separate individual winning</p> <p>9 combinations. The actual number of plays is</p> <p>10 determined by the actual selection process of</p> <p>11 the individual lines. So it would go in and</p> <p>12 it would say I'm going to let you have a \$1.00</p> <p>13 winner. And it would select that prize from</p> <p>14 down here. Or it could say I'm going to let</p> <p>15 you have three lines; in those three lines I'm</p> <p>16 going to let you have three cherry winners.</p> <p>17 That's the lowest prize value.</p> <p>18 Again, it is selected by the</p> <p>19 machine. It makes that determination again,</p> <p>20 selection process.</p> <p>21 Q. Before we move on from that screen,</p> <p>22 let's see if we can identify it in your</p> <p>23 report. I'm going to refer to you page 7.</p> <p>24 On page 7 of your report is the top block that</p>

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<p style="text-align: right;">Page 62</p> <p>1 you referred to; is that the line?</p> <p>2 A. Yes, that's the line. And then</p> <p>3 below that is what's referred to the win tier</p> <p>4 finite table. And it then picks those, and</p> <p>5 normally it tells you the number that is</p> <p>6 played. In this case, there was 60,000 are in</p> <p>7 available, but 40,800 have already been</p> <p>8 played. So subtract one from the other,</p> <p>9 that's how many are left.</p> <p>10 MR. GEARHISER: You mean on your</p> <p>11 exhibit, not on this machine.</p> <p>12 THE WITNESS: Right.</p> <p>13 MR. GEARHISER: Okay, okay.</p> <p>14 BY MR. LAMPKE:</p> <p>15 Q. Your exhibit came from this machine,</p> <p>16 did it not?</p> <p>17 A. This is -- what happened was, on</p> <p>18 this, the machines are set up in series, and</p> <p>19 we do not have -- this is a slave, not the</p> <p>20 master. This is from the master that would</p> <p>21 carry the records. Okay.</p> <p>22 What you could do on several of</p> <p>23 these machines is, sort of like computers, you</p> <p>24 could string them together. These machines</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. Have you ever been given access to</p> <p>2 the source codes to describe that usage?</p> <p>3 A. No, I have not.</p> <p>4 Q. Okay. So without that information</p> <p>5 from the owner of this machine, whether it's</p> <p>6 the permit holder or somebody else, out of</p> <p>7 60,000 possible winning combinations, by my</p> <p>8 calculations and let me know if you agree with</p> <p>9 me, 58,449 games you would not win more than</p> <p>10 the amount of your wager?</p> <p>11 A. If it was an individual choice.</p> <p>12 Again, I don't know how many lines are</p> <p>13 physically selected.</p> <p>14 Q. Okay.</p> <p>15 A. We had talked earlier about there</p> <p>16 are meters inside the machine that record how</p> <p>17 much money is placed into the machine; they're</p> <p>18 referred to as hard meters, and I pointed them</p> <p>19 out to the Commission. They're inside and</p> <p>20 they're black plastic and they have numbers on</p> <p>21 them.</p> <p>22 This is the electronic version, so</p> <p>23 every dollar that is placed into the machine</p> <p>24 is electronically recorded inside the machine</p>
<p style="text-align: right;">Page 63</p> <p>1 can be strung together, and if you'd like, I</p> <p>2 could turn the machine around.</p> <p>3 Q. That's okay.</p> <p>4 A. And you could see that there's a</p> <p>5 plug-in so that you could allow them to run</p> <p>6 them as one master and then the slave.</p> <p>7 Q. Out of 60,000 possible winning</p> <p>8 combinations, how many opportunities are there</p> <p>9 to win the grand prize?</p> <p>10 A. One.</p> <p>11 Q. How many times would you not win</p> <p>12 more than the amount you wagered?</p> <p>13 A. That would be around 80-something</p> <p>14 percent.</p> <p>15 Q. Over 80 percent?</p> <p>16 A. Right. But again, you have to</p> <p>17 consider that's based on one line. You could</p> <p>18 have multiple lines. That would be reduced</p> <p>19 from there.</p> <p>20 Q. If you did not base it on multiple</p> <p>21 lines, and I understand that is part of the</p> <p>22 equation, do you have a manual to describe the</p> <p>23 line usage?</p> <p>24 A. No, I do not.</p>	<p style="text-align: right;">Page 65</p> <p>1 on the actual tables. It also records other</p> <p>2 things such as how much money is in different</p> <p>3 type of variations, amounts were placed into</p> <p>4 the machine.</p> <p>5 We're now in the setup, what they</p> <p>6 refer to as the setup menu. Inside the setup</p> <p>7 menu there is a button called game setup. The</p> <p>8 game setup allows the owner or, let's say the</p> <p>9 owner of the machine, to adjust the</p> <p>10 percentages on the machine. For example, the</p> <p>11 manufacturer sets this at a base rate. The</p> <p>12 individual operator can then adjust that rate,</p> <p>13 but not to exceed the amount set by the</p> <p>14 manufacturer.</p> <p>15 COMMISSIONER GARDNER: So --</p> <p>16 THE WITNESS: Excuse me. Picture</p> <p>17 again, yeah, I'm going to go backwards, it</p> <p>18 might be a little easier. Yes?</p> <p>19 COMMISSIONER GARDNER: Not to exceed</p> <p>20 the minimum that the owner put in, or the</p> <p>21 maximum?</p> <p>22 THE WITNESS: In this one, the game</p> <p>23 level was set at 95 percent.</p> <p>24 COMMISSIONER GARDNER: 95 percent</p>

17 (Pages 62 to 65)

<p style="text-align: right;">Page 66</p> <p>1 meaning what?</p> <p>2 THE WITNESS: For every dollar put</p> <p>3 in into the machine, it pays out 95 percent,</p> <p>4 \$.95, and \$.05 is retained for the operator or</p> <p>5 owner of the machine.</p> <p>6 COMMISSIONER GARDNER: Okay.</p> <p>7 BY MR. LAMPKE:</p> <p>8 Q. And is that reflected in page 8 of</p> <p>9 your report?</p> <p>10 A. Yes.</p> <p>11 CHAIRMAN MCNAMARA: Can the operator</p> <p>12 of the machine increase that 95 percent or</p> <p>13 decrease the 95 percent?</p> <p>14 THE WITNESS: Yes, he can. And he's</p> <p>15 done -- there's adjustments and settings that,</p> <p>16 in this case, you can see that there was an</p> <p>17 adjustment of 2.48 percent, so that he raised</p> <p>18 the total amount possible to 97.48. So that</p> <p>19 is adjustable by the operator of the machine.</p> <p>20 CHAIRMAN MCNAMARA: It could be</p> <p>21 reduced down the other way too?</p> <p>22 THE WITNESS: I do not believe it</p> <p>23 can go below the 95 percent. They could set</p> <p>24 that to zero and they would have to disable, I</p>	<p style="text-align: right;">Page 68</p> <p>1 clarification, 95 percent means that for every</p> <p>2 dollar you put in, you can win, over a period</p> <p>3 of time, average \$.95 for every dollar?</p> <p>4 THE WITNESS: Yeah. In this case,</p> <p>5 there's no average. What happens is, this</p> <p>6 machine --</p> <p>7 COMMISSIONER GARDNER: That's what's</p> <p>8 confusing me.</p> <p>9 THE WITNESS: Yeah. This machine</p> <p>10 has a cartridge inside it, and probably the</p> <p>11 easiest comparison to do is if you had a box</p> <p>12 of break-open tickets, when you begin to sell</p> <p>13 that first ticket you know exactly -- if I</p> <p>14 sell all the tickets, I will receive X number</p> <p>15 of dollars, I will pay out so many dollars in</p> <p>16 this machine. That bottom area that I showed,</p> <p>17 where it actually determines what we call the</p> <p>18 prize award schedule inside the machine, it</p> <p>19 knows that every card is a winner. If I sell</p> <p>20 every game inside the cartridge, I'm assured</p> <p>21 that 95 percent will be paid out and 5 percent</p> <p>22 will be retained in the machine.</p> <p>23 So picture if you just take one of</p> <p>24 those boxes of cards, it can't exceed that</p>
<p style="text-align: right;">Page 67</p> <p>1 believe, the spinner and the flipper, but I'm</p> <p>2 not certain on that because I don't have an</p> <p>3 owner's manual or the actual book, but it</p> <p>4 cannot go below the 95 percent set by the</p> <p>5 manufacturer.</p> <p>6 BY MR. LAMPKE:</p> <p>7 Q. Have you reviewed multiple</p> <p>8 Tic-Tac-Fruit versions of these machines?</p> <p>9 A. Yes.</p> <p>10 Q. And in your review of those</p> <p>11 machines, has the game level setup been</p> <p>12 different on each or every machine?</p> <p>13 A. Yes. Unless they're in the same</p> <p>14 establishment. Usually at the same</p> <p>15 establishment, they're usually set at the same</p> <p>16 rate. However, I've been in establishments</p> <p>17 where there will be five machines and two are</p> <p>18 set different than the three.</p> <p>19 Q. And what is the range that you have</p> <p>20 seen, although that's not the range that it</p> <p>21 can be?</p> <p>22 A. Up to 95 -- 98 percent. From 95 to</p> <p>23 98 percent.</p> <p>24 COMMISSIONER GARDNER: Just for my</p>	<p style="text-align: right;">Page 69</p> <p>1 because that's all the game -- that's all the</p> <p>2 games that are available to be played. Once</p> <p>3 that cartridge is empty, then you have to load</p> <p>4 another cartridge.</p> <p>5 BY MR. LAMPKE:</p> <p>6 Q. For example, if this machine</p> <p>7 contained a cartridge of 60,000 games per</p> <p>8 cartridge and it took -- and this isn't the</p> <p>9 actual value, but it took \$1,000.00 to play</p> <p>10 all of those games, what would the net result</p> <p>11 to the player be if the player successfully</p> <p>12 completed the task?</p> <p>13 A. Okay, yeah, it would be 95 percent.</p> <p>14 So 95 percent would be paid for that</p> <p>15 \$1,000.00, \$950.00 would be returned to the</p> <p>16 player, and the \$50.00 would be retained by</p> <p>17 the operator owner of the machine. These are</p> <p>18 set at 95 percent.</p> <p>19 Q. Does the player have any opportunity</p> <p>20 to beat the machine, to get greater than that</p> <p>21 percentage?</p> <p>22 A. No.</p> <p>23 Q. Based on any application of skill?</p> <p>24 A. No. No, he can't exceed that,</p>

18 (Pages 66 to 69)

<p style="text-align: right;">Page 70</p> <p>1 because that's the maximum level the machine 2 was set at. So you can't exceed that. 3 Now, there is a possibility, if 4 there was a carryover in a jackpot, that would 5 be the exception. But in the next cartridge, 6 it would probably adjust itself out. 7 Q. Would it adjust itself out through 8 the bonus rounds as well? 9 A. Right. If there was a carryover. 10 Q. And the bonus rounds are described 11 as what? 12 A. Well, it's based on the symbols that 13 appear. Some of them you do not have access 14 to and require a certain amount of paying into 15 the machine to set that, for that feature to 16 become available. 17 Q. What are the bonus round features? 18 A. Well, there's actually two. There's 19 what's referred to -- I'm going to switch in 20 back to the regular mode. 21 Q. Are you finished with this mode? 22 A. Yes. 23 Q. Okay. 24 A. Okay. We had went through the</p>	<p style="text-align: right;">Page 72</p> <p>1 Q. Is there any skill involved to a 2 player once he obtains the bonus round to get 3 extra money? 4 A. In actually pressing or making a 5 decision, no. No. Same thing as -- it's 6 already decided what it's going to pay you 7 out. It knows what it's going to pay you out. 8 Q. So it's a decision made by the 9 machine? 10 A. The machine makes that decision. 11 Q. Can you describe the other bonus 12 round? 13 A. Yeah. The other one is what's 14 referred to as the spinner. I've only had the 15 spinner happen once to me during about 40 16 hours of play, but a wheel comes up, and we 17 can put this in a demonstration mode in a 18 little bit. But essentially there's a -- 19 picture a pie with different -- the same size 20 slices. A little ball goes around. When you 21 press the screen, the ball stops. 22 Again, this has really no control, 23 because the machine knows what it's going to 24 pay out.</p>
<p style="text-align: right;">Page 71</p> <p>1 actual, what I referred to as the replay award 2 schedule. The values of these correspondingly 3 go up as you go up this column. This is the 4 column on the left, the far left-hand side. 5 So you'll see that cherries have the least 6 value, the lemons have the next value, then to 7 oranges, plums, bells, then what's referred to 8 as the flip, the spinner, and then the 9 titanium bars, the one that's the jackpot. 10 So when you have this, that's sort 11 of to assist the player in the decision-making 12 process. If you were to have three flips in a 13 row, you would then switch to the flip mode. 14 And you would then play a game where you press 15 certain portions of the screen. In reality, 16 the machine already knows what it's going to 17 pay out, and that's the value of the flipper 18 or the value of the spinner, set by how much 19 money is pulled from each play of the machine. 20 Q. So how much skill is involved from 21 the player in obtaining the additional bonus 22 money? 23 A. Well, it's actually available to him 24 once he selects that combination.</p>	<p style="text-align: right;">Page 73</p> <p>1 Q. Can a player skillfully stop the 2 ball on a number that it wants to stop it on? 3 A. Close, but it really wouldn't make 4 any difference, because it already knows what 5 it's going to pay out. It's already 6 determined by the numbers what it's going to 7 pay out. 8 COMMISSIONER GARDNER: If you played 9 that thing for 60,000 combinations, if you 10 played that 60,000 times, would you be 11 guaranteed to get the titanium bars? 12 THE WITNESS: If you completed the 13 series, correct. And that's why it's a 14 cartridge that has a, what we refer to as a 15 finite number of wins. It has a defined 16 number that it's going to pay out. 17 COMMISSIONER GARDNER: I guess 18 that's the part I need the clarification on. 19 THE WITNESS: Sure. 20 COMMISSIONER GARDNER: If, for 21 instance, that combination that's up there 22 right now, is that one combination out of 23 60,000? 24 THE WITNESS: Yes. If it was the</p>

19 (Pages 70 to 73)

<p style="text-align: right;">Page 74</p> <p>1 titanium bars, correct. If you refer to the 2 chart on page 7, and what I could do is, 3 you'll see that there is one chance out of 4 those 60,000 that the titanium bars would be 5 completed. And if you would go down, the next 6 one would be spinner, the next one would be 7 flip, the next one would be bells, plums, as 8 it relates to -- and it tells you the number 9 of possible winners there would be on that. 10 BY MR. LAMPKE: 11 Q. In answer to Senator Gardner's 12 question, is there only one screen, one game 13 board out of 60,000 combinations that you can 14 win the titanium round? 15 A. Yes. 16 Q. And is it possible to win the 17 titanium round when it does appear? 18 A. Yes. 19 COMMISSIONER GARDNER: Can you win 20 it twice in 60,000? 21 THE WITNESS: No. 22 COMMISSIONER GARDNER: So the 23 cartridge -- and that's the part I'm really 24 trying to understand.</p>	<p style="text-align: right;">Page 76</p> <p>1 other \$500.00 winner in there. 2 THE WITNESS: That's correct. 3 COMMISSIONER GARDNER: That's the 4 same, you can equate that to this? 5 THE WITNESS: Right, but the player 6 would not know that. 7 COMMISSIONER GARDNER: That's what 8 -- okay. But in the pull tabs, at least the 9 person that's selling the pull tabs, if he's 10 standing in front of that person when they're 11 pulling the tabs, who know that that \$500.00 12 winner, because that would dissuade other 13 people from playing that particular pull tab 14 box. 15 THE WITNESS: That's correct. 16 COMMISSIONER GARDNER: That's what 17 I'm trying to get to. Thank you. 18 THE WITNESS: Okay. Okay, what I'll 19 do is, I put \$1.00 in the machine. We're 20 going to be playing for \$.50. 21 BY MR. LAMPKE: 22 Q. Wait a second, before we got into 23 questions from the Commission, I wanted to 24 clarify that on the spinner round, like the</p>
<p style="text-align: right;">Page 75</p> <p>1 THE WITNESS: Right. 2 COMMISSIONER GARDNER: It's like if 3 there's 60,000 little bits in there, and you 4 get that combination, that bit is now gone off 5 that cartridge? 6 THE WITNESS: Right. If you look at 7 the second column on page 7, the bottom one, 8 you'll see is that on tier one there's one 9 involved, it's already been played. So 100 10 percent of those have been played out. 11 There's only one inside the machine. Again, 12 that's already been played. If there was a 13 zero there, it would still be available for 14 play. 15 BY MR. LAMPKE: 16 Q. And this is not available to the 17 person that's playing? 18 A. It would be available to the 19 operator or owner of the machine. 20 COMMISSIONER GARDNER: So like the 21 pull tabs, if you know that in a box of pull 22 tabs there is a \$100.00 winner or \$500.00 23 winner, and once somebody has pulled that 24 \$500.00, you know for sure that there's no</p>	<p style="text-align: right;">Page 77</p> <p>1 flipper round, the flip round, the machine 2 controls what that bonus amount will be 3 without any application of skill from the 4 player? 5 A. The application of skill would be to 6 complete that series, then the machine already 7 knows what it's going to pay out. The second 8 half is really not involved because the 9 machine pays out whatever it's going to pay 10 out. And how that's filled is that it takes a 11 percentage of the individual plays or losses, 12 that money is transferred. 13 Q. The player plays a round. You're 14 talking about a player completing a game 15 board? 16 A. A game board, right. 17 Q. And then once that game board is 18 completed for a spinner line series, it would 19 go to a separate screen? 20 A. Yeah, to goes to a separate -- yeah, 21 it goes the whole thing, and in the case of a 22 flip, it looks like a little vault. In the 23 case of a spinner, the entire screen fills up 24 with the pie-shaped fair, and I can show you</p>

20 (Pages 74 to 77)

<p style="text-align: right;">Page 78</p> <p>1 that when we get to the demonstration mode, 2 because I'm not that lucky. 3 Q. Okay. In that separate screen, does 4 the player employ any skill in obtaining that 5 spinner bonus? 6 A. No. Once that decision is made, it 7 already knows how much it is. The only thing 8 that the player has to do is physically press 9 the screen the number of times till -- 10 Q. To activate it? 11 A. To activate it, to get your money. 12 Q. So the outcome of playing the 13 spinner round is determined by the machine 14 without any skill from the player? 15 A. It's already decided, right. 16 Q. Okay. 17 A. It's predetermined. 18 Q. Okay. I wanted to clarify that 19 before you moved on. Go ahead. 20 A. Okay. What I'm going to first do 21 is, when you start to play, there is a time 22 setting set by the machine, by the operator of 23 the machine. I'm not going to play the 24 machine, and I'm going to have it go through</p>	<p style="text-align: right;">Page 80</p> <p>1 problem, if he needs to -- because I think 2 everybody wants to see how it plays. 3 MR. LAMPKE: Is that the master? 4 MR. GEARHISER: It's not the master, 5 but it's a single play that does exactly the 6 same. It's the same version, everything is 7 exactly the same. We knew what version was 8 here because, luckily, the copy that you 9 showed us, it's not the same version. 10 COMMISSIONER GARDNER: Is there a 11 way to tell from looking at the outside of 12 them that one is a slave and one is a master? 13 THE WITNESS: The only thing that 14 you'd see is a wire going from the one machine 15 to the other machine. 16 MR. GEARHISER: If you knew 17 machines, you'd know it. But, like I'm sure 18 the agent who brought it here, he wouldn't 19 have known the difference. 20 MR. LAMPKE: Why don't we go ahead 21 and turn yours on and as we continue on with 22 our testimony, maybe we can get a sample play 23 out of your machine. 24 BY MR. LAMPKE:</p>
<p style="text-align: right;">Page 79</p> <p>1 and cycle. So when I press my \$.50, I would 2 then press play. What would happen would be, 3 these images -- 4 MR. GEARHISER: You want to use 5 ours? If your machine is not working 6 properly, we can get ours up and operating. 7 MR. LAMPKE: But you were talking 8 this is a slave machine? 9 THE WITNESS: See, what happens is, 10 this is a slave; it needs the master to pull 11 the games. 12 MR. LAMPKE: So the cartridge is not 13 there on this one; is that what you're saying? 14 THE WITNESS: There's no cart -- 15 it's the availability of a cartridge, but it 16 can't access what it needs from the other 17 machine because the master isn't here. This 18 is the slave. 19 MR. LAMPKE: I apologize to the 20 Commissioners for that. 21 COMMISSIONER GARDNER: I understand 22 the purpose. I understand the master-slave 23 concept. 24 MR. GEARHISER: But I don't have any</p>	<p style="text-align: right;">Page 81</p> <p>1 Q. Bill, is there any other description 2 you can do while we're waiting for that 3 machine to go through its cycle? 4 A. Okay. What happens is that this is 5 the version, it's tic-tac-toe and it's fruit. 6 Down at the bottom there are specific codings 7 that will identify the individual cartridge 8 inside the machine. Again, based on the model 9 of the machine, they can have X number of 10 cartridges. Each one has a different 11 capability to support separate machines. 12 Now, what happens when you place 13 your wager, you would place either \$.50, 14 \$1.00, \$2.00, or \$4.00. You would then hit 15 the play button. These images would move, and 16 there would be -- you would make a decision 17 where you want to place a wild card. And it's 18 probably easier if I'd wait for the machine in 19 the meantime. 20 Q. Bill, if you're finished with your 21 description without demonstrating a play, why 22 don't I go through some additional questions 23 here. 24 A. Sure.</p>

21 (Pages 78 to 81)

<p style="text-align: right;">Page 82</p> <p>1 Q. Is the game designed to produce a 2 guaranteed income? 3 A. Yes, the machine is. 4 Q. How so? 5 A. It's set by the actual table that we 6 looked at and the percentages. So it knows 7 that all the prizes are paid out. In fact, it 8 pays whatever the settings are. So if it's 9 set at 95 percent, it pays out 95 percent, 10 retains 5 percent for the operator/owner of 11 the machine. 12 Q. Can the permit holder or owner of 13 the machine adjust the guaranteed return 14 percentage? 15 A. The individual player cannot. The 16 owner of the machine would have the capability 17 of adjusting the spinner rate and all the 18 rates within the machine, but not the 19 manufacturer's set rate. 20 Q. How does that control the outcome of 21 a play of the machine? 22 A. What it would do is that it would 23 remove money from one area and transfer it to 24 another. It would allow the spinner to have</p>	<p style="text-align: right;">Page 84</p> <p>1 select what the prize is going to be for those 2 line combinations randomly. So it would make 3 that decision. 4 Then at the same time it would 5 transfer a certain amount of money to the flip 6 and the spinner area. Now, that could be 7 based on the 95 percent or it could be 8 increased by the individual operator to bring 9 people in to play. 10 The player then would then play the 11 game. And then that would be skill. 12 Q. Completing the task of -- 13 A. Completing the task of deciding what 14 the lines are. 15 Q. Okay. When a player activates the 16 machine, they do that by hitting the play 17 button? 18 A. Yes. 19 Q. When that occurs, does the computer 20 then determine what game board the player will 21 play? 22 A. Yes. It then picks the number of 23 lines of the winner and then the actual prize 24 to be awarded.</p>
<p style="text-align: right;">Page 83</p> <p>1 more of a value. It would allow the flip to 2 have a higher value. Correspondingly, on the 3 manufacturer's or the operator's side, it 4 would lessen some of their profits. But it 5 would pay out more to encourage people to play 6 more. 7 Q. In reviewing your description of the 8 machine, how many tasks or identified 9 characteristics of the machine would you say 10 is based on skill? 11 A. Okay. 12 Q. Of the player. 13 A. Yeah. When you talk about the task, 14 task is like the entire process, but we'll go 15 through the different components of it. 16 The player would put the money in, 17 and there's some ability to put the dollar in 18 that involves some type of skill. 19 You would then put the -- you would 20 then make a selection of how much you wish to 21 wager. 22 You would then press the play 23 button. The play button would then go select 24 the number of lines randomly. It would then</p>	<p style="text-align: right;">Page 85</p> <p>1 Q. Can a player skillfully choose what 2 game board he or she will play? 3 A. No. And this is where this departs 4 from a normal skill-based game. If you walk 5 to a pinball machine, you would put money into 6 the machine and begin to play the machine. 7 It's not a different service; it's the same 8 for everybody that plays. It's the same award 9 schedule. 10 So let's say it was a pinball 11 machine that you needed 10,000 points to win a 12 free game. It would be the same for you, it 13 would be the same for anybody that would play 14 that machine. They would have to have that 15 amount of skill to receive a free replay on 16 the machine. 17 And this one, the machine, you play 18 a game, you complete a task, we're talking 19 about the task being completing, the number of 20 lines. It has already decided how much it's 21 going to pay you if you successfully complete 22 that. So one person could play it, get \$.20. 23 Another person could play and complete one 24 line and get \$2,800.00. And it's just by what</p>

22 (Pages 82 to 85)

<p style="text-align: right;">Page 86</p> <p>1 random board comes up.</p> <p>2 So let's just say, what</p> <p>3 differentiates a little bit of this is that</p> <p>4 when we walk up to a pinball machine, you know</p> <p>5 what you're going to win if you complete the</p> <p>6 task. In this case, it does tell you what the</p> <p>7 options are, the value of those, but in fact</p> <p>8 until you play the game and put your money in,</p> <p>9 what you get back is determined by the</p> <p>10 machine. It's chance.</p> <p>11 So let's just say you knew that the</p> <p>12 next one up was \$.20, would be a \$.20 winner.</p> <p>13 Would you walk up and put \$1.00 in the machine</p> <p>14 if you know you could win \$.20? And the</p> <p>15 answer is no.</p> <p>16 MR. GEARHISER: Objection.</p> <p>17 Q. You personally wouldn't do that?</p> <p>18 A. I personally wouldn't do it.</p> <p>19 CHAIRMAN MCNAMARA: What reason?</p> <p>20 MR. GEARHISER: Well, the whole</p> <p>21 point of this is, in most skill-based</p> <p>22 amusement machines, in virtually all</p> <p>23 skill-based amusement machines, you never get</p> <p>24 any more than you put in. Now, there may be</p>	<p style="text-align: right;">Page 88</p> <p>1 the play button. And the wheels turn. And</p> <p>2 they stop.</p> <p>3 Your task is to complete the game</p> <p>4 and obtain the highest dollar amount. So in</p> <p>5 this case, for my \$.50 bet, by completing the</p> <p>6 series, I had made the correct choice and I</p> <p>7 won \$.25 for my \$.50.</p> <p>8 CHAIRMAN MCNAMARA: To make a</p> <p>9 correct choice, what did you --</p> <p>10 THE WITNESS: Okay, if I were to,</p> <p>11 let's say, press this one, I would have lost</p> <p>12 out on this combination, so I could make an</p> <p>13 incorrect choice.</p> <p>14 MR. GEARHISER: Yeah, you're going</p> <p>15 to need more than fifty cents to show all the</p> <p>16 games.</p> <p>17 BY MR. LAMPKE:</p> <p>18 Q. On this game board, how many lines,</p> <p>19 how many winning lines were there?</p> <p>20 A. One, two, three.</p> <p>21 Q. And the correct placement to obtain</p> <p>22 all of the lines available to this game board,</p> <p>23 where did you place the wild symbol?</p> <p>24 A. In the center. We're going to play</p>
<p style="text-align: right;">Page 87</p> <p>1 objection, I'll withdraw the objection, but</p> <p>2 I'll go into that on cross-examination.</p> <p>3 BY MR. LAMPKE:</p> <p>4 Q. Before we get to your ultimate</p> <p>5 conclusions, could you please demonstrate one</p> <p>6 game?</p> <p>7 A. Sure.</p> <p>8 Q. And as you're walking over to the</p> <p>9 machine, how much time does a player have to</p> <p>10 complete the task?</p> <p>11 A. It's individually set by the</p> <p>12 operator.</p> <p>13 Q. Okay. And generally, what is the --</p> <p>14 A. We're going to --</p> <p>15 Q. We'll find out on this machine?</p> <p>16 A. We'll find out.</p> <p>17 Again, we put the money in, it</p> <p>18 registers the type of machine. Because we</p> <p>19 only put \$1.00, makes the \$.50 -- I'm sorry.</p> <p>20 Because we put \$1.00 in, it only makes it</p> <p>21 available to play the \$.50 game or the \$1.00</p> <p>22 game. We probably want to play two, so we'll</p> <p>23 play \$.50.</p> <p>24 You then wager \$.50. You then press</p>	<p style="text-align: right;">Page 89</p> <p>1 a couple.</p> <p>2 COMMISSIONER GARDNER: Is there</p> <p>3 always a wild symbol?</p> <p>4 THE WITNESS: Yes.</p> <p>5 COMMISSIONER GARDNER: Okay.</p> <p>6 COMMISSIONER COLONNA: What did you</p> <p>7 put in there, Kurt?</p> <p>8 MR. GEARHISER: We put a 20 in, so</p> <p>9 he could play enough.</p> <p>10 COMMISSIONER COLONNA: Let me know</p> <p>11 next time you play, I'll give you the money.</p> <p>12 (Laughter.)</p> <p>13 BY MR. LAMPKE:</p> <p>14 A. Again, now that we have money, we</p> <p>15 could then play, let's say, this game for</p> <p>16 \$4.00, or we could play it for \$2.00 or \$1.00.</p> <p>17 We would make a decision how much we would</p> <p>18 like to wager in this machine.</p> <p>19 So let's play for \$4.00. We would</p> <p>20 press play.</p> <p>21 MR. GEARHISER: Of course, with my</p> <p>22 money, see, he's playing for \$4.00.</p> <p>23 A. And in this case, what would happen,</p> <p>24 we could make again the correct choices in the</p>

23 (Pages 86 to 89)

<p style="text-align: right;">Page 90</p> <p>1 center, and for the \$4.00, we won \$3.20. So</p> <p>2 the machine has \$.80.</p> <p>3 Q. And how many line winners were</p> <p>4 there on this game board?</p> <p>5 A. One, two, three, four. So when it</p> <p>6 picked this game, it went into it, it said I'm</p> <p>7 going to make a four-line winner. And then</p> <p>8 inside it, it's going to pick out I want one</p> <p>9 to be lemons -- or two to be lemons, one to be</p> <p>10 oranges, and one to be cherries. It</p> <p>11 electronically determined that. It randomly</p> <p>12 selected it.</p> <p>13 Q. So you received a game board to play</p> <p>14 that had the maximum number of lines of</p> <p>15 winning combinations?</p> <p>16 A. Right.</p> <p>17 Q. And you still received less than the</p> <p>18 amount you wagered?</p> <p>19 A. Yes.</p> <p>20 Q. And what is the time that you have</p> <p>21 to complete that task?</p> <p>22 A. Okay, we're going to do that. We're</p> <p>23 going to play \$.50 now. And if I start the</p> <p>24 play, you'll see in this area it will tell you</p>	<p style="text-align: right;">Page 92</p> <p>1 guessed correctly, I would have received</p> <p>2 \$1.60. So even if I guessed correctly, I</p> <p>3 would have lost \$2.60.</p> <p>4 BY MR. LAMPKE:</p> <p>5 Q. Is the task to place the bonus icon</p> <p>6 in a way that it will create three lines --</p> <p>7 A. It will create the maximum amount of</p> <p>8 wins for you.</p> <p>9 MR. GEARHISER: The wild icon, not</p> <p>10 the bonus icon.</p> <p>11 THE WITNESS: The wild icon, right.</p> <p>12 BY MR. LAMPKE:</p> <p>13 Q. So it would create three identical</p> <p>14 symbols within a line?</p> <p>15 A. That's correct. And what you want</p> <p>16 to do is pick the correct choice to maximize</p> <p>17 that choice.</p> <p>18 Q. And the wild symbol will become</p> <p>19 whatever fruit, in this case, that will make</p> <p>20 it a winning combination?</p> <p>21 A. That's correct. It's sort of, if</p> <p>22 you picture, it's a wild card, and so you</p> <p>23 could put that wild card on the board to</p> <p>24 complete it for the highest possible total,</p>
<p style="text-align: right;">Page 91</p> <p>1 that the timer, and it will say that you have</p> <p>2 ten seconds, nine seconds, eight seconds,</p> <p>3 seven, six, five, four, three, two, one, and</p> <p>4 you lost.</p> <p>5 And then if you notice, the amount</p> <p>6 of a loss is added for another player. The</p> <p>7 money doesn't go to the profit of the house,</p> <p>8 they don't keep the excess; it goes back into</p> <p>9 the machine.</p> <p>10 Okay. And again, it increases this</p> <p>11 amount in the area of the bonus value area.</p> <p>12 We'll play it again. We'll play it</p> <p>13 at \$4.00. And I'm going to make a wrong</p> <p>14 choice. Okay. Let's just say that I know</p> <p>15 that this is the correct choice, so let's say</p> <p>16 I put this one.</p> <p>17 COMMISSIONER COLONNA: How do you</p> <p>18 know it's the correct choice?</p> <p>19 THE WITNESS: Because I'm trying to</p> <p>20 complete a tic-tac-toe.</p> <p>21 COMMISSIONER COLONNA: Okay. Go</p> <p>22 ahead.</p> <p>23 THE WITNESS: So in this case, there</p> <p>24 were no wins. For my \$4.00 wager, if I</p>	<p style="text-align: right;">Page 93</p> <p>1 and that would be the skill portion of the</p> <p>2 game.</p> <p>3 COMMISSIONER COLONNA: You got two</p> <p>4 cherries on there. What if you pick the one</p> <p>5 in the middle there, what would happen then?</p> <p>6 THE WITNESS: Okay. If we were to</p> <p>7 pick --</p> <p>8 COMMISSIONER COLONNA: No, no, the</p> <p>9 one by the cherries.</p> <p>10 THE WITNESS: Here?</p> <p>11 COMMISSIONER COLONNA: Yeah.</p> <p>12 THE WITNESS: It would actually pay</p> <p>13 off this way and pay off this way, and that</p> <p>14 would be the \$1.60 win for your \$4.00 wager.</p> <p>15 COMMISSIONER COLONNA: Or you could</p> <p>16 pick the wild card, right?</p> <p>17 THE WITNESS: No, no, no. Let's</p> <p>18 play one more time.</p> <p>19 COMMISSIONER COLONNA: Do you have a</p> <p>20 choice?</p> <p>21 BY MR. LAMPKE:</p> <p>22 Q. Is there any wild card on the screen</p> <p>23 when the --</p> <p>24 A. There's no wild until you press.</p>

24 (Pages 90 to 93)

<p style="text-align: right;">Page 94</p> <p>1 COMMISSIONER COLONNA: No wild card</p> <p>2 there.</p> <p>3 THE WITNESS: Right. And then you</p> <p>4 would make your decision where I would like to</p> <p>5 place it. So what you try and do is, within</p> <p>6 the time period make that correct selection.</p> <p>7 If you don't, it tells you. In fact, for my</p> <p>8 \$.50 bet, I didn't win because I didn't</p> <p>9 complete the task within the time frame, but</p> <p>10 even if I completed the task for my \$.50</p> <p>11 investment, I would receive \$.20.</p> <p>12 COMMISSIONER GARDNER: That amount</p> <p>13 varies every time?</p> <p>14 THE WITNESS: Every time. And</p> <p>15 that's randomly selected by the computer.</p> <p>16 BY MR. LAMPKE:</p> <p>17 Q. And ultimately you would lose \$.30?</p> <p>18 A. Correct.</p> <p>19 CHAIRMAN MCNAMARA: The selection of</p> <p>20 the right one to push, is that something that</p> <p>21 would take a Ph.D. or --?</p> <p>22 THE WITNESS: I'm not. What it is</p> <p>23 is that, I would assume that there's a very</p> <p>24 short learning curve. At least the people</p>	<p style="text-align: right;">Page 96</p> <p>1 CHAIRMAN MCNAMARA: But the skill is</p> <p>2 really minimal.</p> <p>3 THE WITNESS: In my opinion, yes.</p> <p>4 BY MR. LAMPKE:</p> <p>5 Q. Can you please take your seat and</p> <p>6 let's wrap this up and take a short break</p> <p>7 then.</p> <p>8 How many hours have you spent</p> <p>9 evaluating and examining the Tic-Tac-Fruit</p> <p>10 machines?</p> <p>11 A. Probably around 40 hours now.</p> <p>12 Q. And how much of that time was spent</p> <p>13 playing the game versus analyzing it?</p> <p>14 A. Probably, with me playing, it's</p> <p>15 probably been about five hours; watching other</p> <p>16 people, I would probably add on about two or</p> <p>17 three hours on top of that, watching other</p> <p>18 people play the machine.</p> <p>19 Q. Do you have an opinion, to a</p> <p>20 reasonable degree of gambling device</p> <p>21 certainty, if the Tic-Tac-Fruit machine is an</p> <p>22 electronic video gambling device?</p> <p>23 A. Yes, I do.</p> <p>24 Q. What is your opinion?</p>
<p style="text-align: right;">Page 95</p> <p>1 that I have watched play this machine, within</p> <p>2 probably 20, 25 plays they usually understand</p> <p>3 the completion. Every now and then you do</p> <p>4 make a mistake, but once you've played the</p> <p>5 game probably 20, 25 times, you have no</p> <p>6 trouble completing the task every time. But</p> <p>7 what happens is, is that for your investment,</p> <p>8 you usually receive less.</p> <p>9 CHAIRMAN MCNAMARA: But it's not a</p> <p>10 great deal of skill that's required to pick</p> <p>11 out the --</p> <p>12 THE WITNESS: Right. A good way to</p> <p>13 do this, if we could put it in this different</p> <p>14 game format. Let's say we say complete the</p> <p>15 series, and we say the number one, two, three,</p> <p>16 and you have to pick out the next number; is</p> <p>17 it four, five, or seven? You say, well,</p> <p>18 naturally it's four. And when you hit that,</p> <p>19 you would receive \$2.00 -- you bet \$2.00 and</p> <p>20 you receive \$.40.</p> <p>21 So there is a skill involved to</p> <p>22 complete the task, but the machine is going to</p> <p>23 tell you how much it's going to pay off, or</p> <p>24 pay out.</p>	<p style="text-align: right;">Page 97</p> <p>1 A. Yes, it is. What happens on the</p> <p>2 machine is that, it's the randomness -- if you</p> <p>3 look at the task, the task involves making the</p> <p>4 appropriate selection, and maybe I can go to a</p> <p>5 different game.</p> <p>6 There's a carnival game that</p> <p>7 operates in the carnival midway and which is</p> <p>8 called a balloon dart, but it has a number</p> <p>9 behind it. So you have to throw a dart at a</p> <p>10 balloon and you break it. Behind it there's a</p> <p>11 little tag that you cannot see that says</p> <p>12 small, medium, or large. If you break the</p> <p>13 balloon, you don't know what you win until he</p> <p>14 turns over the tag. And historically, in the</p> <p>15 state of Ohio, that's been found to be a</p> <p>16 gambling game.</p> <p>17 Q. Do you have an opinion, to a</p> <p>18 reasonable degree of gambling device</p> <p>19 certainty, if the outcome of playing this</p> <p>20 Tic-Tac-Fruit machine is primarily based on</p> <p>21 skill or primarily based on chance?</p> <p>22 A. It is based on chance.</p> <p>23 Q. Additionally, in your opinion, is</p> <p>24 someone other than the player controlling the</p>

25 (Pages 94 to 97)

<p style="text-align: right;">Page 98</p> <p>1 outcome of the game?</p> <p>2 A. Yes. By the ability to set the</p> <p>3 percentage of wins, you can control the</p> <p>4 actual, the percentage of winning prizes.</p> <p>5 Most of your skill-based machines, it's based</p> <p>6 on the skill of a player.</p> <p>7 In other words, if you get 100,000</p> <p>8 points or I get 100,000 points on a pinball</p> <p>9 machine, we get exactly the same prize. If I</p> <p>10 don't accomplish 100,000 points, then I get</p> <p>11 nothing. So it's the same for everybody.</p> <p>12 They don't say at one time you're a very</p> <p>13 skillful player, we're only going to let you</p> <p>14 get 90,000 points instead of a 100,000 points.</p> <p>15 They say no, everybody can win at the rate</p> <p>16 they would.</p> <p>17 And I think everybody has sort of</p> <p>18 been in an arcade where you watch a</p> <p>19 14-year-old kid play a machine for about a</p> <p>20 week and a half on his quarter. You walk in</p> <p>21 with your quarter and you last about six</p> <p>22 seconds. So it's in that type of game mode.</p> <p>23 MR. LAMPKE: Commissioners, with the</p> <p>24 admission of Department's Exhibit D, we would</p>	<p style="text-align: right;">Page 100</p> <p>1 Q. Okay. So that shouldn't be in here?</p> <p>2 A. That shouldn't be in here.</p> <p>3 Q. Okay. Did it get copied from</p> <p>4 another --</p> <p>5 A. Yes.</p> <p>6 Q. All right, all right. If you go up</p> <p>7 a little higher in that same area -- excuse</p> <p>8 me, come down a little bit, it says the</p> <p>9 Supreme Court of the State of Arkansas in the</p> <p>10 case of State versus --</p> <p>11 A. Yeah.</p> <p>12 Q. That's not --</p> <p>13 A. That's not this machine. But</p> <p>14 there's not a lot of case law on machines that</p> <p>15 have been attempted to be tried as</p> <p>16 skill-based.</p> <p>17 Q. I understand, but Tic-Tac-Fruit --</p> <p>18 A. Is not --</p> <p>19 Q. I want to make sure, because the</p> <p>20 way it was written in here, it sounds like</p> <p>21 they're similar games?</p> <p>22 A. Right. It's just like I did</p> <p>23 according to the Department of Agriculture,</p> <p>24 they have nothing on -- other than the penny</p>
<p style="text-align: right;">Page 99</p> <p>1 have no further questions.</p> <p>2 CHAIRMAN MCNAMARA: Cross-exam?</p> <p>3 MR. GEARHISER: I would suggest we</p> <p>4 take a five-minute break?</p> <p>5 CHAIRMAN MCNAMARA: All right.</p> <p>6 (A break was taken.)</p> <p>7 MR. GEARHISER: Thank you,</p> <p>8 Commissioners.</p> <p>9 - - - - -</p> <p>10 CROSS-EXAMINATION</p> <p>11 BY MR. GEARHISER:</p> <p>12 Q. I have looked at what's been marked</p> <p>13 as State's Exhibit D, and if you go back to</p> <p>14 page 10?</p> <p>15 A. Yes.</p> <p>16 Q. It's the opinion, and you give some</p> <p>17 history, fair rules, and some other stuff down</p> <p>18 there.</p> <p>19 A. Sure.</p> <p>20 Q. The last one there that says</p> <p>21 presence of double-up game on most of the</p> <p>22 machines examined?</p> <p>23 A. Yeah. It's not relating to this</p> <p>24 machine.</p>	<p style="text-align: right;">Page 101</p> <p>1 fault machine relating to skill-based.</p> <p>2 Q. Okay, let's get to that too, because</p> <p>3 you mentioned Ohio Department of Agriculture,</p> <p>4 and there's nothing in the statute today, in</p> <p>5 the statute that was passed in July of '03,</p> <p>6 that refers to the Department of Agriculture?</p> <p>7 A. No.</p> <p>8 Q. In fact, we have -- the Liquor</p> <p>9 Control Commission has no rules, the</p> <p>10 Department of Public Safety has no rules, and</p> <p>11 as far as I know, no administrative agency has</p> <p>12 passed any rules to date, is that correct, on</p> <p>13 skill-based games?</p> <p>14 A. On a state level?</p> <p>15 Q. Correct.</p> <p>16 A. Correct.</p> <p>17 Q. So what we've got is the statute to</p> <p>18 look at?</p> <p>19 A. Correct.</p> <p>20 Q. All right. So what happened in the</p> <p>21 past with some court decisions, because at one</p> <p>22 point pinball machines were illegal in the</p> <p>23 state of Ohio, pursuant to Westerhouse?</p> <p>24 A. Pinball machines without flippers.</p>

26 (Pages 98 to 101)

<p style="text-align: right;">Page 102</p> <p>1 Q. Correct, were illegal?</p> <p>2 A. Were illegal. Pinball machines with</p> <p>3 flippers were legal.</p> <p>4 Q. And so in your understanding, in</p> <p>5 July of '03, everything kind of changed in</p> <p>6 Ohio, we got a new statute?</p> <p>7 A. Right.</p> <p>8 Q. All right, good. Now, you said</p> <p>9 something that I think I need to correct,</p> <p>10 because again my knowledge of this machine is</p> <p>11 maybe not as good as yours. But can you come</p> <p>12 back over to the machine you were looking at</p> <p>13 and show us where you had that 95, there was a</p> <p>14 setup that showed 95 something?</p> <p>15 A. Sure.</p> <p>16 Q. Okay.</p> <p>17 A. What you have to do is throw it into</p> <p>18 the setup mode. And the actual setup mode,</p> <p>19 and the game setup mode; is this the screen</p> <p>20 you're referencing?</p> <p>21 Q. The one that said -- yeah, we'll go</p> <p>22 with that one first, then we'll go on to</p> <p>23 something else. All right, you said it has a</p> <p>24 game level of 95 percent?</p>	<p style="text-align: right;">Page 104</p> <p>1 that.</p> <p>2 Q. Right.</p> <p>3 A. But the base level is set -- in</p> <p>4 other words, I could leave this at zero and</p> <p>5 keep this at 95 percent.</p> <p>6 Q. Right. Can you change that in here</p> <p>7 now?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. You can't change the game</p> <p>10 level?</p> <p>11 A. No, I can't. That's set by the</p> <p>12 manufacturer; that's the 95 percent.</p> <p>13 Q. So what your testimony was was that</p> <p>14 you believe that this machine will always, no</p> <p>15 matter what, pay out to the players 95 percent</p> <p>16 of what they put in?</p> <p>17 A. Ultimately, when all the dollars are</p> <p>18 in, right. Because it's a finite cartridge.</p> <p>19 Now, if that's not the case, then it's not a</p> <p>20 finite cartridge.</p> <p>21 Q. Well, you can win each one of these</p> <p>22 if you're really good, each play?</p> <p>23 A. Yes.</p> <p>24 Q. And you can lose each one if you're</p>
<p style="text-align: right;">Page 103</p> <p>1 A. Right.</p> <p>2 Q. Okay. Now, I know you told us you</p> <p>3 didn't have a menu, so I'm assuming you just</p> <p>4 made the guess or the educated guess or your</p> <p>5 study of it shows that this machine pays out</p> <p>6 95 percent?</p> <p>7 A. Well, it starts off that; that's</p> <p>8 from the manufacturer, having discussed it</p> <p>9 with the inventor.</p> <p>10 Q. All right. Well, I think the</p> <p>11 inventor may say something different, but</p> <p>12 that's why I'm asking you.</p> <p>13 A. Sure.</p> <p>14 Q. You think the machine pays off 95</p> <p>15 percent no matter what?</p> <p>16 A. No. The additional to that is these</p> <p>17 adjustable levels.</p> <p>18 Q. Okay. Well, then if we add it</p> <p>19 together, and it looks like it's here, it's</p> <p>20 set at 97.48, you would say the machine pays</p> <p>21 off 97.48 percent for every dollar put in?</p> <p>22 A. Right. And I explained that in my</p> <p>23 original testimony; I went through and I</p> <p>24 explained how those are additionally added to</p>	<p style="text-align: right;">Page 105</p> <p>1 really bad?</p> <p>2 A. I don't think anybody is that bad.</p> <p>3 Q. Okay, but you could?</p> <p>4 A. Yeah, I mean it's theoretically</p> <p>5 possible.</p> <p>6 Q. If I play ten times in a row, I</p> <p>7 could certainly lose ten times in a row?</p> <p>8 A. Right.</p> <p>9 Q. What's the percentage payouts for</p> <p>10 the guy who loses every time?</p> <p>11 A. Well, there would be no payout,</p> <p>12 because he wouldn't win.</p> <p>13 Q. Okay. So the really bad player</p> <p>14 would never win?</p> <p>15 A. The extremely bad player, but I</p> <p>16 can't believe that anybody would be that bad.</p> <p>17 Q. So if I played -- if there were</p> <p>18 2,000 plays in a cartridge or 20,000 plays in</p> <p>19 a cartridge and I lost them all, how much</p> <p>20 money would I win?</p> <p>21 A. None.</p> <p>22 Q. I thought you told me and you told</p> <p>23 the Commission and you told everybody here</p> <p>24 that this machine paid out 95 percent no</p>

27 (Pages 102 to 105)

<p style="text-align: right;">Page 106</p> <p>1 matter what?</p> <p>2 A. Right.</p> <p>3 Q. But it doesn't pay out 95 percent?</p> <p>4 A. Well, if I can explain.</p> <p>5 Q. Sure.</p> <p>6 A. Okay. What happens is, is that that</p> <p>7 money that is lost is transferred to the prize</p> <p>8 area, so somebody is going to win that.</p> <p>9 Q. No, remember, I lost every play.</p> <p>10 A. Right. It still goes into the</p> <p>11 thing, so the next person that plays after</p> <p>12 you're done has the possibility of winning</p> <p>13 that.</p> <p>14 Q. Well, doesn't the cartridge end?</p> <p>15 You told us that there was an end?</p> <p>16 A. Right, but it would then, it sets up</p> <p>17 the next cartridge, and the carryover</p> <p>18 transfers to the next cartridge.</p> <p>19 Q. Have you ever played this machine to</p> <p>20 the end?</p> <p>21 A. No, I have not.</p> <p>22 Q. Do you know that it automatically</p> <p>23 goes to another cartridge?</p> <p>24 A. I understand it, from the --</p>	<p style="text-align: right;">Page 108</p> <p>1 incorrectly picked the spot?</p> <p>2 A. I don't understand the question.</p> <p>3 Q. The first player wins, plays this</p> <p>4 game over here and he wins a lot of the plays?</p> <p>5 A. Right.</p> <p>6 Q. Now I come along and I'm a bad</p> <p>7 player, and I lose the last 50 or the last 100</p> <p>8 plays on the machine?</p> <p>9 A. Um-hmm.</p> <p>10 Q. And, of course, the machine is</p> <p>11 randomly picking the games for us to solve?</p> <p>12 A. Sure.</p> <p>13 Q. And I'm a bad player and I keep</p> <p>14 hitting the wrong location, or I look away and</p> <p>15 the game times out?</p> <p>16 A. Sure.</p> <p>17 Q. What's the set percentage that is</p> <p>18 going to go to the house?</p> <p>19 A. Well, it would be all the money</p> <p>20 that's not selected by the games being chosen.</p> <p>21 Q. So when you said that it was always</p> <p>22 95 percent, that's clearly not the case, is</p> <p>23 it?</p> <p>24 A. You're talking about such an</p>
<p style="text-align: right;">Page 107</p> <p>1 Q. Do you know?</p> <p>2 A. No.</p> <p>3 Q. So isn't it a fact the cartridge,</p> <p>4 when it stops, it stops, and if you lost, then</p> <p>5 in fact, if I lost every play, the percentage</p> <p>6 payoff to me would be zero?</p> <p>7 A. Correct, so then it would be profit</p> <p>8 to the house then, at 100 percent.</p> <p>9 Q. I understand that, but I'm just</p> <p>10 saying, I'm just wondering to you to</p> <p>11 understand, but I think the information you</p> <p>12 gave us is wrong. Now, let me ask you this:</p> <p>13 Let's just say I got halfway through?</p> <p>14 A. Um-hmm.</p> <p>15 Q. We're not, but if we get halfway</p> <p>16 through this machine?</p> <p>17 A. Right.</p> <p>18 Q. And I lost the last half, what would</p> <p>19 be the payoff to the player? Would it be 95</p> <p>20 percent?</p> <p>21 A. It depends on what was randomly</p> <p>22 selected by the machine.</p> <p>23 Q. And whether the player won or lost,</p> <p>24 is that correct, whether he correct or</p>	<p style="text-align: right;">Page 109</p> <p>1 improbability that probably not will occur,</p> <p>2 that somebody would lose every game.</p> <p>3 Q. Let's say, could the bonus play come</p> <p>4 up on the last play? Could the bonus come up</p> <p>5 on the last?</p> <p>6 A. Yes, but there's a problem with</p> <p>7 that.</p> <p>8 Q. Could the bonus come up on the last</p> <p>9 play?</p> <p>10 A. It's possible.</p> <p>11 Q. And if I lost a bonus on the last</p> <p>12 play?</p> <p>13 A. Right.</p> <p>14 Q. Then the bonus money would just</p> <p>15 disappear, correct?</p> <p>16 A. No, that's not correct. According</p> <p>17 to --</p> <p>18 Q. Again, what do you know?</p> <p>19 A. Well, this is how I find things out,</p> <p>20 is I ask the manufacturer who --</p> <p>21 Q. We'll bring the manufacturer in, but</p> <p>22 I'm asking what do you know.</p> <p>23 A. Right, that's what he told me. And</p> <p>24 you're asking me what I know, and that's where</p>

28 (Pages 106 to 109)

<p style="text-align: right;">Page 110</p> <p>1 I learned it. Because there is no booklet 2 published on this machine so that I can do 3 independent research from the machine. 4 Q. Okay. Is there something in the law 5 that says you're supposed to be given a 6 booklet or there's a requirement to be given a 7 booklet? 8 A. No. 9 Q. All right. Is there anything in the 10 law that says you have to pay out more money 11 than you wager each and every time? 12 A. No. 13 Q. Okay. Well, we have gone through 14 this whole testimony -- 15 A. You want me to sit down? 16 Q. You can sit down, yes. 17 A. Okay. 18 Q. We've gone through this long 19 testimony about how, man, I put \$1.00 in and I 20 can only win \$.40. 21 A. Um-hmm. 22 Q. Is that illegal to only win \$.40? 23 A. What happens is that -- 24 Q. Is that illegal to win \$.40?</p>	<p style="text-align: right;">Page 112</p> <p>1 A. But again, you know what you're 2 playing for prior to the starting of the game. 3 In other words, you made a selection to pick 4 that teddy bear up. 5 Q. I understand that. I'm asking -- 6 A. On this machine -- if I could 7 finish. 8 Q. You can. You can answer my 9 questions too. 10 A. And I am. 11 Q. Okay. 12 A. On this machine, what happens is, it 13 decides what the value of the prize that I'm 14 playing for. 15 Q. Is there any in this -- 16 A. Now me, as a crane, I make that 17 decision on what I'm picking up, and I believe 18 that's the question you asked me. 19 Q. Does the statute say that the prize 20 has to be announced ahead of time? Is there 21 anything in the statute that says it has to be 22 announced ahead of time? 23 A. I believe that would be in the area 24 of chance.</p>
<p style="text-align: right;">Page 111</p> <p>1 A. In the way that machine operates, 2 yes. 3 Q. Okay. Let me ask you this then. If 4 I played a crane game? 5 A. Okay. 6 Q. And crane game is a game of skill; 7 assuming they don't put the flush down and 8 assuming the claw actually has tension in it 9 and it can pick something up? 10 A. And then there's about 50 other 11 things that would be -- 12 Q. Assuming -- 13 A. It's a perfect crane game? 14 Q. Correct, it works perfectly. 15 A. Right. 16 Q. All right. And I'm the best crane 17 player you've ever seen. I can wheel this way 18 and wheel this way and I can pick those 19 stuffed animals up one at a time? 20 A. Right. 21 Q. And I can empty the machine? 22 A. Right. 23 Q. All right. Stuffed animal is worth 24 what, \$.10, \$.20, \$.30?</p>	<p style="text-align: right;">Page 113</p> <p>1 Q. No, I'm asking you, does the statute 2 indicate the prize must be announced ahead of 3 time, for a single task game or play? 4 A. In those exact words, no. 5 Q. All right. Now, if you have a 6 competition, contest, or tournament, the prize 7 needs to be announced ahead of time, doesn't 8 it, by statute? 9 A. Yes. 10 Q. So in a contest, competition, or 11 tournament, I need to know what I'm playing 12 for, but by exclusion, the statute doesn't say 13 anything that it needs to tell me ahead of 14 time what I'm playing for. Never says those 15 specific words, does it? 16 A. Does not say those specific words. 17 Q. All right. Now, let me ask you 18 this. Go back up to the machine where you 19 showed something about 60,000? 20 A. Yes. 21 Q. And I don't know where it is on here 22 because, again, I don't know these machines. 23 A. You're not under oath. 24 Q. Well, I don't know how to work the</p>

29 (Pages 110 to 113)

<p style="text-align: right;">Page 114</p> <p>1 computers. I may know the innards of them, 2 but not the computer. All right. Down at the 3 bottom you indicated 60,000? 4 A. Yes. 5 Q. Now, that's 60,000 possible -- 6 A. Combinations. 7 Q. -- tiers? 8 A. Combinations. 9 Q. It's not 60,000 plays? 10 A. Correct. Combinations. 11 Q. I think we may have been mistaken by 12 that. So there are 60,000 possible tiers that 13 are going to appear on the screen? 14 A. Correct. And that's going to be 15 relating to the number of lines selected, 16 would be the determining factor of how many 17 actual game plays there would be. 18 Q. Do you know how many possible 19 combinations of puzzles there are? Puzzles, 20 the puzzles that appear on the screen? That's 21 a puzzle right there, is what I call it; it's 22 a puzzle, a task, a game, a play? 23 A. Um-hmm. 24 Q. Do you know how many possible</p>	<p style="text-align: right;">Page 116</p> <p>1 involves a task to play the game, I guess the 2 term the statute uses is a skillful game. 3 A. The task is technically the entire 4 piece. What we're saying is that you have to 5 successfully complete the puzzle to have 6 access to the prize. 7 Q. Okay. And so to do that involves 8 some skill? 9 A. Yes. 10 Q. It may be minimal skill but it's 11 some skill? 12 A. Yes. 13 Q. And the players, every player, when 14 they come up, can win -- has the opportunity 15 to win each and every time they play the game? 16 A. That's correct. 17 Q. And they have the opportunity to 18 lose each and every time they come up? 19 A. That's a possibility. 20 Q. Okay. Now, you testified here 21 earlier with the Chess Challenge and Gone 22 Fishing game, and that was not the case, they 23 had some plays that you could walk away and 24 automatically win, correct?</p>
<p style="text-align: right;">Page 115</p> <p>1 variations there are of this particular game? 2 A. Well, I could do the math, but -- 3 Q. 109 million, would that be about 4 right? Eight to the ninth power? 5 A. It would be -- 6 Q. A large number? 7 A. Right, right. 8 Q. And so out of those 109 million 9 combinations, the computer, on its own, 10 decides we're going to use these 60,000? 11 A. Right, but it's not going to exceed 12 that. 13 Q. Correct. We're going to use this 14 many tiers? 15 A. Right. 16 Q. And we're going to have -- this 17 particular machine, I think, had 30,000 plays 18 at one time, or the cartridge had 30,000 19 plays? 20 A. Right. 21 Q. I just wanted to make sure everybody 22 knew that amount. 23 Now, you testified in Meigs County 24 and you also testified here that the game</p>	<p style="text-align: right;">Page 117</p> <p>1 A. Correct. 2 Q. So this machine, you can have no 3 automatic winners? 4 A. No. But you could randomly select 5 and by chance win, by pressing the button, 6 just like you said, it's impossible to guess 7 the wrong answer; you could certainly guess 8 the right answer. 9 Q. Right. And if you randomly 10 selected, you would be right 11 percent of the 11 time, one out of nine? 12 A. But it could be the one that has the 13 \$2,800 prize. 14 Q. Oh, I understand that. 15 A. Right. 16 Q. Right, but there's nothing in the 17 statute that says -- the prize can be anything 18 of value, correct? 19 A. And there doesn't have to be a 20 prize. 21 Q. Right. If this game was played out 22 -- that's my next question, it's perfect. If 23 the game was played without money, skill-based 24 game, so the only problem that you've got is</p>

30 (Pages 114 to 117)

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1 the payment of the prize?
 2 A. Well, actually, I would back up on
 3 that, because I think you took a quantum leap.
 4 What happened is, is that if you win a prize
 5 by the application of chance, okay, that in
 6 fact would be a violation. So even if you won
 7 a free game, the value of that free game,
 8 replay of the machine, has value, so that
 9 would be a prize.
 10 Q. I understand that. I'm just talking
 11 about in your analysis --
 12 A. I wanted to make sure everybody
 13 understood that.
 14 Q. Okay. In your analysis, if there
 15 were no prizes, you just play the game?
 16 A. They just completed the tic-tac-toe.
 17 Q. Correct. Skill game?
 18 A. If you're just playing tic-tac-toe,
 19 correct.
 20 Q. Right. Skill-based game. By
 21 definition in Ohio, skill-based game?
 22 A. Yeah, if you're just playing
 23 tic-tac-toe.
 24 Q. Okay. Now, when did you first look

Page 119

1 at the tic-tac-toe, do you remember?
 2 A. Tic-tac-toe?
 3 Q. Tic-Tac-Fruit, excuse me. March,
 4 Stark County?
 5 A. No, before that. I thought it was
 6 Lorain County.
 7 Q. It's been in Lorain County?
 8 A. Never officially, but it was there.
 9 Q. Okay. Can you elaborate on that?
 10 A. No. If you'd like me to, I will.
 11 Q. Well, I just asked that question.
 12 A. The machine was presented by an
 13 individual who wanted to bring the machine
 14 into Lorain County.
 15 Q. Oh, okay, so you have looked at it
 16 up there?
 17 A. Right.
 18 Q. When were you first contacted by the
 19 Department of Public Safety to look at this,
 20 if you recall.
 21 A. Officially, it was with Matt Lampke,
 22 but I have discussed it with other people on
 23 the telephone.
 24 Q. Okay. But when was that? July?

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1 A. No, actually I think the first time
 2 was probably in February-March period.
 3 Q. Okay. And where did you look at it?
 4 A. That would have been in Stark
 5 County.
 6 Q. Okay. And do you know anything
 7 relating to the fact that the manufacturers
 8 and distributors and end users of
 9 Tic-Tac-Fruit tried to get the Department of
 10 Public Safety to look at this ahead of time;
 11 do you know anything about that?
 12 MR. LAMPKE: Objection, relevance.
 13 Witness is not an employee.
 14 CHAIRMAN MCNAMARA: The question is
 15 does he know anything about it. The answer
 16 probably is no, but --
 17 A. I know there was a booklet being
 18 circulated that was presented to prosecutors
 19 in the area. I don't know if the actual
 20 Attorney General's office received one of
 21 those.
 22 Q. Giving cash as a prize is clearly
 23 okay in Ohio?
 24 A. Uh-huh, on a skill-based machine,

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1 correct, for a contest.
 2 Q. Right. Is golf a game of skill?
 3 Maybe not the way I play it, but --
 4 A. I have a business handicap, I don't
 5 know.
 6 Q. But is it a game of skill, in your
 7 opinion?
 8 A. Yes, yes.
 9 Q. All right. The three chairmen and
 10 you are on the golf course. Chairman McNamara
 11 is at a golf outing, all of you are at a golf
 12 outing. He takes a mighty swing with a nine
 13 iron from a par of three at 138 yards, into
 14 the cup, wins \$1,000. Charity golf outing.
 15 Is golf still a game of skill?
 16 A. The result of that action, if it was
 17 based on his skill, and the skill that he put
 18 into that shot is based on skill, then, yes,
 19 it would be.
 20 CHAIRMAN MCNAMARA: I can't hit a
 21 nine iron 138 yards.
 22 THE WITNESS: Then it would be a
 23 game of chance, in his case.
 24 (Laughter.)

31 (Pages 118 to 121)

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1 BY MR. GEARHISER:
 2 Q. Next day, Mr. Riedthaler and the
 3 three chairmen are out, same golf course,
 4 different charity outing. Chairman McNamara
 5 now takes a seven iron because he can't hit a
 6 nine iron 139 yards. Mighty swing, takes it
 7 one bounce, into the cup. He wins \$5,000.
 8 Still a game of skill, correct? Golf is still
 9 a game of skill?
 10 A. Yes.
 11 Q. All right. Three times in a row,
 12 third charity golf outing, the four of you are
 13 out there again. Chairman McNamara one more
 14 time, hole-in-one, million shot, can't believe
 15 it. There was no award that day, because
 16 they've now moved it because they know
 17 Chairman McNamara is such a good golfer that
 18 he'll get that hole-in-one. Now, I would
 19 assume golf is still a game of skill even
 20 though they won no prize?
 21 A. That's correct.
 22 Q. So one day \$1,000, one day \$5,000,
 23 one day zero?
 24 A. Um-hmm.

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1 Q. But the game being played, the task
 2 to complete to get the hole-in-one wins him
 3 the prize?
 4 A. Right. But he's aware of the prize
 5 prior to starting the event.
 6 Q. Okay, let's say he doesn't know, he
 7 just shows up. He's called the day before by
 8 Chairman -- or by Vice Chairman Gardner and
 9 says, hey, come to the tournament, we're going
 10 to play some golf. He doesn't know, just
 11 shows up, doesn't know ahead of time. Is golf
 12 no longer a game of skill because he didn't
 13 know the prize?
 14 A. Well, what you have to do is back
 15 up. One thing, you don't have the requirement
 16 of paying a price, because he didn't pay a
 17 price to play that.
 18 Q. Let's say it's a \$500-per-man fee to
 19 get -- because we're raising funds for that
 20 charity.
 21 A. He knows that if he gets this hole
 22 he will receive this --
 23 Q. And he didn't know it, he had no
 24 idea.

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1 A. Was he given a card to describe it?
 2 Q. No. He just showed up.
 3 A. He just showed up and gave \$500?
 4 Q. Right.
 5 A. We've moved it toward chance that he
 6 wouldn't --
 7 Q. So now golf is a game a chance?
 8 A. What did he win by not knowing what
 9 you're doing and playing when you consider
 10 that chance?
 11 Q. Well, you're asking me the question.
 12 I guess the question I'm going to ask you is,
 13 isn't golf a game of skill no matter what you
 14 do?
 15 A. It's a game of skill, I'll give you
 16 that.
 17 Q. All right. So no matter how you
 18 play it, poorly or well, it's a game of skill?
 19 A. Let's take it a little --
 20 Q. I'm asking a question.
 21 A. No, it's not. And I can give you an
 22 example.
 23 Q. So wait a minute --
 24 A. You're --

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1 Q. Just a second. You've now said golf
 2 is not a game of skill.
 3 A. If you're placing a wager on an
 4 individual hole, it would then become public
 5 gaming.
 6 Q. I understand that. I didn't ask if
 7 you were wagering. I just asked you, is golf
 8 ever not a game of skill?
 9 A. And I'm saying, in that case, you
 10 could make it public gaming. A violation.
 11 Q. The activity of gambling on the game
 12 of golf --
 13 A. Right.
 14 Q. -- is illegal, I understand that.
 15 A. Okay.
 16 Q. But the game of golf, what we're
 17 getting to, not what you do.
 18 A. I understand.
 19 Q. The game of golf is a game of skill
 20 no matter what, correct?
 21 A. Yes.
 22 Q. And pressing that button, letting
 23 the machine play, and picking like this?
 24 A. You won.

32 (Pages 122 to 125)

<p style="text-align: right;">Page 126</p> <p>1 Q. Right.</p> <p>2 A. By random chance.</p> <p>3 Q. Absolutely. One out of nine times I</p> <p>4 can do it, correct?</p> <p>5 A. Right.</p> <p>6 Q. Now I play it again. Close my eyes.</p> <p>7 Lose. Oh, I did win. Won some, lost some.</p> <p>8 Again, have the opportunity to win, correct?</p> <p>9 A. But you still won by your</p> <p>10 application, in your case, of pure chance.</p> <p>11 Q. What I'm saying is, I understand</p> <p>12 that 10 or 11 percent of the time you can win</p> <p>13 this. But if I am a player, which you have</p> <p>14 identified who can win each and every time, if</p> <p>15 I am doing it by pure -- by chance, by numeric</p> <p>16 number, what's the odds of me being correct on</p> <p>17 this machine? It's one out of nine, correct?</p> <p>18 A. Right.</p> <p>19 Q. Or 11 percent?</p> <p>20 A. Um-hmm, right.</p> <p>21 Q. So 11 percent of the time I come up</p> <p>22 here and do this?</p> <p>23 A. Right.</p> <p>24 Q. But if I'm a good player, I'm going</p>	<p style="text-align: right;">Page 128</p> <p>1 Some switch?</p> <p>2 A. From what I understand, from a</p> <p>3 report, that the machine can be changed.</p> <p>4 Q. Can you change it for us?</p> <p>5 A. No, I cannot.</p> <p>6 Q. Can anybody change it?</p> <p>7 A. I'm just going by a report that I</p> <p>8 looked at.</p> <p>9 Q. Whose report?</p> <p>10 A. Mr. Farley's report.</p> <p>11 Q. Mr. who's?</p> <p>12 A. Farley's report.</p> <p>13 Q. Oh. Do you have that here?</p> <p>14 A. If I could borrow it?</p> <p>15 Q. I don't think you'll find that in</p> <p>16 here.</p> <p>17 MR. LAMPKE: I don't know where it</p> <p>18 is. I can look for it during a break.</p> <p>19 Q. You can look for it later. You're</p> <p>20 going to be on the stand for a long time,</p> <p>21 don't worry. You guys can look at it. We'll</p> <p>22 get to that.</p> <p>23 A. Okay.</p> <p>24 Q. So you got no -- I've been told for</p>
<p style="text-align: right;">Page 127</p> <p>1 to win 100 percent of the time?</p> <p>2 A. Right.</p> <p>3 Q. And if I'm a bad player, a really</p> <p>4 bad player, I win no percent of the time. Now,</p> <p>5 if I'm a really good golfer, I can shoot a</p> <p>6 certain score. If I'm a really bad golfer --</p> <p>7 but no matter what, golf is still a game of --</p> <p>8 A. What happens if every time you</p> <p>9 played golf they moved the hole to a different</p> <p>10 position, to a different location?</p> <p>11 Q. They do every time I play.</p> <p>12 A. While the ball is in the air?</p> <p>13 Q. Pardon?</p> <p>14 A. Would you consider that game of</p> <p>15 skill or game of chance, if when you hit the</p> <p>16 ball, they moved the hole?</p> <p>17 Q. Do you have a computer program that</p> <p>18 analyzes these?</p> <p>19 A. No, I do not.</p> <p>20 Q. And so how did you analyze it?</p> <p>21 A. What do you mean how did I analyze</p> <p>22 it?</p> <p>23 Q. Well, is there something in here</p> <p>24 that could change this to a poker machine?</p>	<p style="text-align: right;">Page 129</p> <p>1 the experts who look at these computers to</p> <p>2 determine how they're working and how they are</p> <p>3 operating, they build a computer program, they</p> <p>4 do all those things to analyze the aspects of</p> <p>5 the computer. I assume you don't have a lab?</p> <p>6 A. Not really, no.</p> <p>7 Q. Okay, so what you do is you --</p> <p>8 A. Look at the components.</p> <p>9 Q. Right. And you've done this for a</p> <p>10 long time, so I understand that, but you don't</p> <p>11 have any kind of lab or computer work, you</p> <p>12 just look at it and try to determine as best</p> <p>13 you can that's the case?</p> <p>14 A. No.</p> <p>15 Q. Since July of '03, have you looked</p> <p>16 at any skill-based games that you think are</p> <p>17 illegal in Ohio?</p> <p>18 A. Yes.</p> <p>19 Q. Which ones?</p> <p>20 A. Crane machines. I've looked at</p> <p>21 several roll-the-ball-down type games.</p> <p>22 Q. Let's go to the crane game then,</p> <p>23 because you had indicated that earlier.</p> <p>24 A. Yes.</p>

33 (Pages 126 to 129)

<p style="text-align: right;">Page 130</p> <p>1 Q. Who picks out the prize that's going 2 to be in the machine, who picks out the prize? 3 A. The machine. 4 Q. No, but I mean the vendor of the 5 machine -- somebody picks it out? 6 A. The machine picks it out by random. 7 Q. But it's the operator, effectively, 8 correct? 9 A. It's the computer. 10 Q. All right, but it's somebody who 11 owns the machine, it's effectively the guy who 12 is picking the prizes; wouldn't you say that's 13 the case? 14 A. No. What you buy is a software 15 program. That program randomly selects the 16 number of lines of a win and then randomly 17 selects what the prize is going to be. 18 Q. If I asked the computer, I say, 19 listen, I'm the one -- if I'm a vendor and I 20 say give me one of those Tic-Tac-Fruit but I 21 need one \$200 winner, one \$75 dollar, I need 22 all these winners, and I tell the machine 23 software manufacturer to do that. 24 A. Right.</p>	<p style="text-align: right;">Page 132</p> <p>1 prizes that are going to be awarded with 2 Skee-Ball? 3 A. Correct. 4 Q. Well, effectively, in Skee-Ball, 5 generally speaking, it's tickets? 6 A. Right. 7 Q. Now, have you seen Skee-Ball; do you 8 think Skee-Ball is a game of skill? 9 A. Yes. 10 Q. All right. Now, if I put \$1.00 in 11 Skee-Ball and I get the biggest prize or the 12 smallest hole so I get the most amount of 13 tickets? 14 A. Um-hmm. 15 Q. And I take those tickets over? 16 A. Um-hmm. 17 Q. Do I get \$1.00 back? What do I get? 18 A. You would select a prize. 19 Q. Right, and generally speaking, isn't 20 that prize valued well under \$1.00? 21 A. Well, if you're talking retail value 22 or what the merchant paid for the prize. 23 Q. Well, what the merchant paid for it, 24 clearly.</p>
<p style="text-align: right;">Page 131</p> <p>1 Q. The computer still picks them out, 2 but somebody has identified what winners are 3 going in there? 4 A. To set the odds. 5 Q. Right. 6 A. Right. 7 Q. So somebody identified that these 8 were the winners that were going to be in 9 here? 10 A. Correct. 11 Q. All right. Now, the crane game, 12 somebody puts the stuffed animals in there, 13 correct? 14 A. Correct. 15 Q. So the operator or the machine 16 manufacturer picks the prizes here, then the 17 machine manufacturer or the operator picks the 18 prizes that are in there? 19 A. Um-hmm. 20 Q. Skee-Ball, same thing, isn't it? 21 A. Based on the successful completion 22 of the task. 23 Q. Correct. But I mean, it was the 24 operator or the manufacturer that picks the</p>	<p style="text-align: right;">Page 133</p> <p>1 A. Okay, well, there's two different 2 halves. 3 Q. I know. 4 A. I as a player would look at the 5 retail value and then make a decision whether 6 I wished to play that machine based on my 7 skill set knowing that prize was available to 8 me. 9 Q. When I play Skee-Ball, do I know 10 what prize I'm going to get? 11 A. Well, you know how many tickets you 12 can win based on a schedule based on number of 13 points you receive. That's posted usually on 14 the machine. 15 Q. But do I know what prize I'm going 16 to get? 17 A. Well, you can walk to the counter, 18 know what the prizes are, and then make a 19 conscious decision should I play that game. 20 Q. Right. And the statute, once again, 21 doesn't say that you have to show the prize 22 ahead of time? 23 A. No. 24 Q. Is there anything in the statute</p>

34 (Pages 130 to 133)

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1 that says you have to win more than you wager?

2 A. No.

3 MR. LAMPKE: Objection, asked and

4 answered.

5 CHAIRMAN MCNAMARA: Yeah, I don't

6 think this man is necessarily an expert on

7 statutory law.

8 COMMISSIONER GARDNER: While we

9 have this pause, I need to ask, you said the

10 manufacturer sets up the percentage of the

11 program. The way I understand it, he sets up

12 the program, and I imagine he can pull that

13 cartridge out there and put another cartridge

14 in there, a computer disc or whatever, but my

15 question is, can this be programmed down to 85

16 percent or 65 percent?

17 THE WITNESS: If the manufacturer

18 chose to, he can make it no wins.

19 COMMISSIONER GARDNER: Or all wins.

20 THE WITNESS: Or all wins.

21 COMMISSIONER GARDNER: That's what I

22 wondered.

23 BY MR. GEARHISER:

24 Q. There's nothing that prohibits an

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1 operator from making money on games of skill?

2 A. No.

3 Q. So the fact that this machine -- if

4 I was right and played this machine and played

5 all of the plays that were in it and I won the

6 maximum payout, which you, I think, have

7 determined to be 95 or maybe 97 percent?

8 A. We're just saying if it was set at

9 95.

10 Q. Right. So if it's set at 95 percent

11 and I win the maximum amount of money, the

12 operator makes money?

13 A. Right.

14 Q. And there's nothing wrong with that?

15 A. In this instance?

16 Q. No, in the instance of the statutory

17 instance of skill-based law, there's nothing

18 wrong with an operator making money?

19 A. For the slot machine?

20 Q. We're not talking about a slot

21 machine, we're talking about this game, sir.

22 A. You're talking about a machine,

23 that's why I asked you specifically; you said

24 there's nothing wrong with an operator making

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1 money on a machine. That was your question.

2 Q. On a skill-based amusement machine?

3 A. Making money, a profit, no.

4 Q. And so there's nothing wrong with

5 the Tic-Tac-Fruit, if this particular machine

6 was to pay out 95 percent to the player, the

7 only objection you have is to the --

8 A. That's not true.

9 Q. Okay, well, I'll withdraw the

10 question. Let me ask you this.

11 A. Sure.

12 Q. The statute says that if it's a slot

13 machine, it's less skill than chance, correct?

14 A. Right.

15 Q. And if it's a skill-based amusement

16 machine, it's more skill than chance?

17 A. 51 percent.

18 Q. Correct. And in fact, the Attorney

19 General's office gave us a nice written

20 opinion last year on that particular matter.

21 A. From Erie County, which I was

22 involved in.

23 Q. Now, have you read that?

24 A. I was involved in that case.

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1 Q. It wasn't Erie County; was it Erie

2 County?

3 A. Erie County. What happened was that

4 they had machines and I did analysis with -- I

5 had met with the prosecutor. We had a

6 discussion whether it should be prosecuted or

7 not. The prosecutor at the end of our

8 discussion felt that he would write a letter

9 to the Attorney General asking his opinion.

10 Because we originally had discussed at what

11 point does it become gambling. If we were to

12 ask defense counsel, it would have to be 100

13 percent chance versus, you know, maybe if I

14 looked at it, had to be 100 percent skill, so

15 somebody has to set that bar, and it was

16 during the course of the conversation that the

17 prosecutor wrote that letter, as a result of

18 that letter.

19 Q. From Seneca County?

20 A. Seneca County, I'm sorry.

21 Q. You kept saying Erie County.

22 A. Correct.

23 Q. Okay, I just wanted to make sure we

24 were talking about the same thing.

35 (Pages 134 to 137)

<p style="text-align: right;">Page 138</p> <p>1 A. Right.</p> <p>2 Q. All right. So it's the job of this</p> <p>3 Commission to determine if this machine is 49</p> <p>4 or 51 percent skill?</p> <p>5 A. Well, there's another half to that,</p> <p>6 and I think you're missing that, is that, if a</p> <p>7 person that's not participating in the game</p> <p>8 could control the outcome, okay, then the</p> <p>9 machine isn't. By setting the percentage --</p> <p>10 in other words, if you play a truly</p> <p>11 skill-based machine, nothing should prohibit</p> <p>12 you from winning 200 percent, 300 percent.</p> <p>13 Q. Where does it say that in the</p> <p>14 statute? Please point to a spot in the</p> <p>15 statute that it says you've got to win more or</p> <p>16 you have to have the opportunity to win more?</p> <p>17 A. No, it says the outcome is</p> <p>18 determined by a person not playing -- by</p> <p>19 putting a governor for limiting the amount of</p> <p>20 wins, then that's violative of the definition.</p> <p>21 Q. Under what court decision? Under</p> <p>22 your interpretation, correct?</p> <p>23 A. The Commission will make the</p> <p>24 decision.</p>	<p style="text-align: right;">Page 140</p> <p>1 and say how many components involve skill</p> <p>2 versus --</p> <p>3 Q. Well, let's do it, because we need</p> <p>4 to know this, maybe the Commission needs to</p> <p>5 know this.</p> <p>6 A. Okay. What you would first do --</p> <p>7 Q. What component -- what component is</p> <p>8 a skill-based component on this machine?</p> <p>9 A. Well, the skill-based is just the</p> <p>10 ability to correctly complete the series.</p> <p>11 Q. Putting money in, that takes skill?</p> <p>12 A. We'll give you credit for that, one</p> <p>13 percent, two percent.</p> <p>14 Q. But you think that's skill?</p> <p>15 A. Well, it requires the manual</p> <p>16 dexterity to put the money in the machine.</p> <p>17 That would be interpreted as skill.</p> <p>18 Q. Under what you've found to be in</p> <p>19 your --</p> <p>20 A. We were just using that as -- it</p> <p>21 takes required some skill, some people maybe</p> <p>22 couldn't pick up money.</p> <p>23 Q. Pressing the button takes some</p> <p>24 skill, yes or no?</p>
<p style="text-align: right;">Page 139</p> <p>1 Q. But you're making that statement, so</p> <p>2 under the circumstances, your interpretation?</p> <p>3 A. It's my interpretation.</p> <p>4 Q. Is outcome defined by statute?</p> <p>5 A. No, it's not.</p> <p>6 Q. And I might define outcome whether I</p> <p>7 win or lose, and you define outcome whether I</p> <p>8 win or lose money, I think?</p> <p>9 A. Well, that's the final outcome.</p> <p>10 Q. I understand that. But I'm just</p> <p>11 saying, we don't have a definition of outcome.</p> <p>12 A. That is correct.</p> <p>13 Q. But you've determined that it's more</p> <p>14 than 51 percent skill -- excuse me, more than</p> <p>15 50 percent chance?</p> <p>16 A. Correct.</p> <p>17 Q. All right. Give me a percentage.</p> <p>18 A. I'd say we were probably 75 percent.</p> <p>19 Q. Okay. So now we know that you have</p> <p>20 a figure of 75 percent?</p> <p>21 A. Right.</p> <p>22 Q. Can you tell me how you can quantify</p> <p>23 the amount of skill?</p> <p>24 A. Well, you can do it by components</p>	<p style="text-align: right;">Page 141</p> <p>1 A. Yes.</p> <p>2 Q. For hitting this button here?</p> <p>3 A. Yes.</p> <p>4 Q. And then making a selection takes</p> <p>5 some skill?</p> <p>6 A. You missed a major component. The</p> <p>7 machine went out and selected two components.</p> <p>8 Q. I'm asking the questions, and</p> <p>9 listen, I just want to ask you to answer my</p> <p>10 questions. You'll be able to give any</p> <p>11 testimony you want to give when they do that.</p> <p>12 I'm asking a question about in picking a</p> <p>13 location, does that involve skill?</p> <p>14 A. That wasn't your question. You said</p> <p>15 let's go over the components of skill versus</p> <p>16 chance. You started with a logical sequence</p> <p>17 of putting money in the machine.</p> <p>18 Q. And then I went here.</p> <p>19 A. And then you asked me --</p> <p>20 Q. And now I'm going to here.</p> <p>21 A. And as soon as you hit there, that's</p> <p>22 where there's an element of chance coming in.</p> <p>23 That's what I thought you were asking me to</p> <p>24 testify about, where I got my percentage</p>

36 (Pages 138 to 141)

<p style="text-align: right;">Page 142</p> <p>1 numbers from.</p> <p>2 Q. I understand that's what you think I</p> <p>3 asked.</p> <p>4 A. Okay.</p> <p>5 Q. Let me asked you what I asked.</p> <p>6 A. Sure.</p> <p>7 Q. Let me try to explain myself better.</p> <p>8 A. Sure.</p> <p>9 Q. What I'm asking is, picking a</p> <p>10 location here, just doing the picking, is that</p> <p>11 skill, does that take skill?</p> <p>12 A. Again, you can win by the</p> <p>13 application of not choosing, randomly picking.</p> <p>14 Q. So is your answer yes or no?</p> <p>15 A. It requires skill, and at other</p> <p>16 times you can win by improperly selecting.</p> <p>17 Q. I understand. Is it skill or not a</p> <p>18 skill? It's just a simple question, yes or</p> <p>19 no?</p> <p>20 A. Yeah, and I'd say in some cases,</p> <p>21 yes, it is skill, and sometimes it isn't.</p> <p>22 Q. Okay. So you're not sure.</p> <p>23 MR. LAMPKE: Objection,</p> <p>24 mischaracterizes the testimony.</p>	<p style="text-align: right;">Page 144</p> <p>1 in one or two percent, hitting the button is</p> <p>2 one or two percent, and picking the rest is</p> <p>3 that, okay.</p> <p>4 Now, once I've done that, I've</p> <p>5 completed all of the participation by the</p> <p>6 player, correct? Once I've completed putting</p> <p>7 the money in, pressing the button, picking a</p> <p>8 location, I've done all the participation I</p> <p>9 can do?</p> <p>10 A. If you don't count your</p> <p>11 noninvolvement in the spinner and the flip</p> <p>12 game.</p> <p>13 Q. In this game, it awarded me \$.20.</p> <p>14 A. Well, you have to do activity, but</p> <p>15 it produces -- it's of no value, your activity</p> <p>16 performed, because it's already selected the</p> <p>17 prize that you're receiving.</p> <p>18 Q. Okay.</p> <p>19 A. But you're still performing an</p> <p>20 activity, but the activity you're performing</p> <p>21 has no effect on the outcome, because it's</p> <p>22 already been decided by the machine.</p> <p>23 Q. If this machine put the field that</p> <p>24 you were going to play prior to your putting</p>
<p style="text-align: right;">Page 143</p> <p>1 Q. All right. So putting the money in,</p> <p>2 of the 25 -- of the 25 percent skill, what are</p> <p>3 we getting for the money?</p> <p>4 A. One percent. I mean, I'm --</p> <p>5 Q. You don't really know, do you?</p> <p>6 A. No. Not on --</p> <p>7 Q. How about -- how about pressing</p> <p>8 this? What percent skill is this?</p> <p>9 A. I'm going to say less than one</p> <p>10 percent.</p> <p>11 Q. And then picking this, is that the</p> <p>12 other 23?</p> <p>13 A. Yes.</p> <p>14 Q. All right. Now, on what basis did</p> <p>15 you form that opinion?</p> <p>16 A. The separate components of the</p> <p>17 machine.</p> <p>18 Q. Is that in your report anywhere?</p> <p>19 A. I go through the components of the</p> <p>20 machine.</p> <p>21 Q. Is the 75/25 percent --</p> <p>22 A. No. You had asked me to pick a</p> <p>23 number, and I did.</p> <p>24 Q. Okay. So you've picked that putting</p>	<p style="text-align: right;">Page 145</p> <p>1 the dollar in, would that change your opinion</p> <p>2 any?</p> <p>3 A. If the player knew what he was</p> <p>4 playing for, it was not randomly selected, you</p> <p>5 know, after the start of the game --</p> <p>6 Q. Right, then --</p> <p>7 A. If -- if I could?</p> <p>8 Q. I'm sorry, let me withdraw the</p> <p>9 question. Let me just ask this: That's the</p> <p>10 field, all right? So I know when I come up</p> <p>11 here, I've got the opportunity to win this way</p> <p>12 with three oranges?</p> <p>13 A. You have the capability of winning</p> <p>14 \$.15 for your investment.</p> <p>15 Q. Limes if I want to press this</p> <p>16 button?</p> <p>17 A. Right.</p> <p>18 Q. Oranges if I want to press that</p> <p>19 button. Oranges if I want to press that</p> <p>20 button. Or I don't know what was over here,</p> <p>21 but possibly oranges two ways, if I press that</p> <p>22 button. We already changed the screen.</p> <p>23 A. Yeah, in this case, what you have</p> <p>24 is, let's say you took the minimum and bet</p>

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<p style="text-align: right;">Page 146</p> <p>1 \$.50. You would, knowing that you were going</p> <p>2 to give \$.50, if you guess correctly, you</p> <p>3 would win \$.15, or you would -- I'm sorry,</p> <p>4 \$.25 in that case. So you would knowingly</p> <p>5 know that you're playing the game with the</p> <p>6 intent of losing.</p> <p>7 Q. Right. Now, if the machine was</p> <p>8 operated that way?</p> <p>9 A. Right.</p> <p>10 Q. We have it that way, is the machine</p> <p>11 in your opinion legal or illegal?</p> <p>12 A. If you knew the outcome, you knew</p> <p>13 the schedule, and that you knew that the</p> <p>14 process you were going into, then it would be</p> <p>15 a skill. Because you would be playing knowing</p> <p>16 that you're going to lose. I don't know why</p> <p>17 you'd do that.</p> <p>18 Q. I understand, but if you did, you</p> <p>19 would determine this machine to be a</p> <p>20 skill-based machine?</p> <p>21 A. The same as, let's say, pinball, if</p> <p>22 you're playing a game that you know that you</p> <p>23 receive so many points, you receive</p> <p>24 such-and-such a reward, yes.</p>	<p style="text-align: right;">Page 148</p> <p>1 five.</p> <p>2 MR. GEARHISER: Thank you.</p> <p>3 (A break was taken.)</p> <p>4 MR. GEARHISER: Thank you, Mr.</p> <p>5 Chairman, Commissioners, for that delay.</p> <p>6 BY MR. GEARHISER:</p> <p>7 Q. So I had mentioned to you, we were</p> <p>8 just talking about that that situation was up</p> <p>9 there?</p> <p>10 A. Right.</p> <p>11 Q. That the machine would be okay?</p> <p>12 A. The only thing I would add is that</p> <p>13 you'd have to be careful as we take -- if a</p> <p>14 person not participating in the game could</p> <p>15 influence the outcome.</p> <p>16 Q. Right.</p> <p>17 A. Okay, and that would be a concern.</p> <p>18 Q. And what would that be? How could</p> <p>19 you -- how could you -- what is that?</p> <p>20 A. Well, I'd have to see the machine.</p> <p>21 Q. This machine, exactly like this?</p> <p>22 A. Right.</p> <p>23 Q. With that pattern out there right</p> <p>24 now. So I come up to this machine, let's</p>
<p style="text-align: right;">Page 147</p> <p>1 MR. GEARHISER: May I have a</p> <p>2 five-minute break, Commissioners?</p> <p>3 CHAIRMAN MCNAMARA: Yeah, you may.</p> <p>4 MR. GEARHISER: I'm going to try to</p> <p>5 shorten something up by the statement he just</p> <p>6 made, because I think the machine might be</p> <p>7 amenable to those kind of changes, and if they</p> <p>8 are, we might just go forward with this</p> <p>9 hearing and then produce a new machine. So</p> <p>10 let me just make a stop if I can, if that's</p> <p>11 okay.</p> <p>12 CHAIRMAN MCNAMARA: Okay. And I</p> <p>13 know that you want to continue this on to</p> <p>14 another day. Don't feel compelled to drag out</p> <p>15 your cross-examination to ensure that.</p> <p>16 MR. GEARHISER: No. We have four or</p> <p>17 five witnesses that I know will probably not</p> <p>18 -- we'll not get to today.</p> <p>19 MR. LAMPKE: Only one was sworn in.</p> <p>20 MR. GEARHISER: I understand. The</p> <p>21 other two are not here or were coming, because</p> <p>22 one is an Ohio State University professor; he</p> <p>23 still had to do his job. So he'll be here.</p> <p>24 CHAIRMAN MCNAMARA: All right. Take</p>	<p style="text-align: right;">Page 149</p> <p>1 change the play so we can just let it time</p> <p>2 out, okay?</p> <p>3 All right. Now, if I come up to the</p> <p>4 machine, and I haven't put my dollar in yet,</p> <p>5 but this is now on the machine.</p> <p>6 A. And this is the game that you'll be</p> <p>7 playing.</p> <p>8 Q. And this is the game that I'm going</p> <p>9 to be playing.</p> <p>10 A. Right.</p> <p>11 Q. And I know ahead of time that all I</p> <p>12 would have done if I put \$.50 into this</p> <p>13 machine, or if I'm going to play it, the only</p> <p>14 thing I was going to win was \$.10?</p> <p>15 A. Right.</p> <p>16 Q. If that was up there and everything</p> <p>17 else is the same on this machine?</p> <p>18 A. Right.</p> <p>19 Q. I think you're giving it your</p> <p>20 blessing?</p> <p>21 A. I wouldn't see a problem with it.</p> <p>22 Because you're basing -- your skill is</p> <p>23 completing the task as well as knowing what</p> <p>24 your prize is that you're going to receive.</p>

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<p style="text-align: right;">Page 150</p> <p>1 Q. And I'm going to tell you, I'm not 2 sure that I'd play this, because I know that 3 I'm going to lose \$.40. And maybe no one else 4 will play it. But I'll leave that up to the 5 players. That's all I needed to know. 6 A. Right. I mean, I have to see the 7 machine, you know. 8 Q. I understand. But assuming 9 everything was exactly the way it is, it's 10 manufactured the same, it's in the same 11 cabinet, it plays the same, it still has a 12 hold, some kind of hold, but again a player 13 could win each and every time, lose each and 14 every time? 15 A. Um-hmm. 16 Q. But we know the vendor would make 17 money? 18 A. He would know what the outcome or 19 what he would win prior to starting the game. 20 Q. Each and every time, okay. Let me 21 go through my questions, and I may be -- 22 CHAIRMAN MCNAMARA: When you say 23 prior to starting the game, you mean prior to 24 putting his coin in?</p>	<p style="text-align: right;">Page 152</p> <p>1 A. It would have to be all the money 2 coming out. And that's why you'd have to be 3 through the individual components. 4 Q. And I understand that. But I think 5 our machine, you can get your money back out 6 at any time. I'm pretty sure about that. 7 Let me go through here and see if I 8 got any more questions 9 (Pause in proceedings.) 10 MR. GEARHISER: I have no more 11 questions. 12 CHAIRMAN MCNAMARA: Redirect? 13 MR. LAMPKE: Just briefly, Mr. 14 Chairman. 15 - - - - - 16 REDIRECT EXAMINATION 17 BY MR. LAMPKE: 18 Q. Mr. Riedthaler, the operator can 19 make money on a game of skill, correct? 20 A. That's correct. 21 Q. And a game of skill, though, does 22 the operator have the potential of losing 23 money? 24 A. Yes. If you have a very skilled</p>
<p style="text-align: right;">Page 151</p> <p>1 THE WITNESS: Before, yeah, putting 2 your coin in. 3 BY MR. GEARHISER: 4 Q. Or making the button press play. 5 A. You really have to have your money 6 in to press play. 7 Q. Correct. 8 A. Because you'd have to start it by 9 putting the money in the machine. 10 Q. And I guess what I'd be saying is 11 that you could get your money out of this 12 machine at any time; you've tried to -- you 13 can get it paid off at any time? 14 A. Um-hmm. 15 Q. So I mean, if you put \$20 in and see 16 that pattern and went (Indicating) and press 17 the button, you can get all your money back 18 out? 19 A. Yeah, see some of the machines 20 require a minimum payout and are adjustable to 21 \$5.00. 22 Q. I understand that. 23 A. And there's a way to do that. 24 Q. Correct.</p>	<p style="text-align: right;">Page 153</p> <p>1 player or player that would come in and play 2 for an extended period of time, nobody else 3 would play that machine, based on their 4 application of skill. 5 Q. And this machine, does the operator 6 have any potential of losing money? 7 A. No. He will always make a profit. 8 Q. What is the skill involved in the 9 outcome of the play of this machine? I 10 understand you testified as to some 11 percentages based on an awkwardly worded 12 question. Under Ohio Revised Code, what is 13 the skill involved in the outcome of play on 14 this machine? 15 A. If you're actually talking about the 16 actual task, the task doesn't start with the 17 money, doesn't start with the press button, 18 okay; it actually starts with the activation 19 of devices. As soon as you press that button, 20 the first thing that happens, it selects a 21 line. That's done randomly. And the second 22 choice it makes, then, it decides what prize 23 you're going to win. 24 Then the actual images of what Mr.</p>

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<p style="text-align: right;">Page 154</p> <p>1 Gearhiser referred to as the actual puzzle 2 appears on the screen. 3 So if we were to stop it right 4 there, two thirds of the activity would have 5 already occurred by chance. One would be 6 skillful. We then go to two other components 7 inside the machine, one being the flip, one 8 being the spinner. 9 Again, when you actually -- it makes 10 the player believe that he can increase the 11 amount of wins based on his selection, when in 12 fact those selections have already been 13 predetermined by the machine; it's already 14 decided how much it's going to pay out. 15 So that's where I'm getting that, 16 you know, that number from. 17 Q. Now, the game board that appears, 18 and the various columns rotate? 19 A. Yes. 20 Q. When you activate the machine, do 21 those nine fruit images randomly appear on the 22 screen? 23 A. Actually, they're selected prior to, 24 based on the selection made by the machine.</p>	<p style="text-align: right;">Page 156</p> <p>1 tic-tac-toe as long as he gets to go first. 2 A. Right. 3 Q. Would he be a pretty good winner at 4 this game? 5 A. It wouldn't take too long to master 6 it. But ultimately, if he had the dollar, 7 he'd only get to 95. Let's say it was 97, 8 he'd only get the 97 percent. 9 Q. I understand. 10 A. Whereas, if he was truly a skillful 11 player and he was playing, he could continue 12 to play based on those wins, there's no 13 governor that would prevent him from playing. 14 CHAIRMAN MCNAMARA: Thank you. Any 15 other questions? 16 MR. GEARHISER: No questions. 17 CHAIRMAN MCNAMARA: Thank you very 18 much. 19 COMMISSIONER COLONNA: There's only 20 one thing I got to tell you: Out of all 21 three of us up here, there's only one golfer 22 out of this three, and that's Bob Gardner. 23 (Laughter.) 24 MR. LAMPKE: With the admission of</p>
<p style="text-align: right;">Page 155</p> <p>1 In other words, the machine selects what the 2 ultimate -- when they stop, what image is 3 going to be displayed, that's been selected by 4 the machine, the computer of the machine. 5 Q. Okay. And based on that question, 6 then, what percentage do you believe the 7 machine is based on chance or random events 8 occurring? 9 A. It's going to be 75, 76 percent, 10 somewhere in there. 11 COMMISSIONER COLONNA: Could you 12 speak into the mic, please. 13 A. I'm sorry. 75, 76 percent, 14 somewhere in there, because we know it's two 15 thirds plus the spinner plus the flip. 16 MR. LAMPKE: That's all the 17 questions I have. 18 ----- 19 EXAMINATION 20 BY CHAIRMAN MCNAMARA: 21 Q. Mr. Riedthaler? 22 A. Yes, sir? 23 Q. I have a five-year old grandson who 24 has learned how to beat me every time at</p>	<p style="text-align: right;">Page 157</p> <p>1 Exhibits A through D -- A through E, the 2 Department would rest. 3 MR. GEARHISER: I've got no 4 objection, I think I've said, to A, E -- in 5 the order they're coming in, A, E, C, or D. 6 The only one I have objection to is B, which 7 is the report, but I think the Commission is 8 going to allow it in as it's an actual 9 investigative report. 10 CHAIRMAN MCNAMARA: Correct. The 11 State's exhibits are admitted. 12 MR. LAMPKE: Thank you. 13 (Discussion off the record.) 14 ----- 15 MICHAEL PACE 16 being previously sworn, testifies 17 and says as follows: 18 ----- 19 DIRECT EXAMINATION 20 BY MR. GEARHISER: 21 Q. Mr. Pace, would you identify 22 yourself for the record, please. 23 A. My name is Michael R. Pace. 24 COMMISSIONER COLONNA: Speak into</p>

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<p style="text-align: right;">Page 158</p> <p>1 the microphone, please.</p> <p>2 A. My name is Michael R. Pace.</p> <p>3 Q. And, Mike, by the sound of your</p> <p>4 voice, you're probably not from Ohio. Where</p> <p>5 do you hail from?</p> <p>6 A. I grew up in Atlanta, I traveled all</p> <p>7 over the United States, and I've lived the</p> <p>8 last eight years in the Rocky Mountains but am</p> <p>9 now back in Atlanta.</p> <p>10 Q. All right. Do you have a business</p> <p>11 in Atlanta?</p> <p>12 A. I have nine businesses in Atlanta.</p> <p>13 Q. All right. And can you give the</p> <p>14 Commission a background on your education.</p> <p>15 A. I went to Northside High School in</p> <p>16 Atlanta. After the eighth grade, I spent most</p> <p>17 of my time in computer centers instead of</p> <p>18 going to school. I had a first-class FCC</p> <p>19 license by the time I was 16 through a</p> <p>20 correspondence course, which was the</p> <p>21 equivalent of a two-year electrical</p> <p>22 engineering degree. And I started fixing</p> <p>23 pinball machines when I was 12, and I started</p> <p>24 designing games when I was 13. And I designed</p>	<p style="text-align: right;">Page 160</p> <p>1 memory, the way it works. I wrote the</p> <p>2 operating system that runs on the board.</p> <p>3 I came up with the game concepts as to how</p> <p>4 the game should play to comply with law. And</p> <p>5 then I also did 100 percent of the programming</p> <p>6 of it as well.</p> <p>7 Q. So would it be fair to say that</p> <p>8 although there may be some people who gave you</p> <p>9 ideas of what might or might not be a</p> <p>10 successful or enjoyable amusement device,</p> <p>11 you've done all the computer work on this</p> <p>12 particular machine?</p> <p>13 A. And virtually all the concept stuff</p> <p>14 as well.</p> <p>15 Q. All right. And did you build this</p> <p>16 -- was it your intention to build this to fit</p> <p>17 Ohio law?</p> <p>18 A. Absolutely.</p> <p>19 Q. Is there a Tic-Tac-Fruit built for</p> <p>20 any other state?</p> <p>21 A. There's similar games which I</p> <p>22 designed to meet the law in other states.</p> <p>23 This concept here that evolved into the game</p> <p>24 we did for Ohio was too skillful to work in</p>
<p style="text-align: right;">Page 159</p> <p>1 and developed the world's first countertop</p> <p>2 game in 1979.</p> <p>3 Q. Would it be fair to say that ever</p> <p>4 since you were in, virtually, middle school,</p> <p>5 you've been involved in electronic gaming or</p> <p>6 software of some type?</p> <p>7 A. Yes. I had a degree from the</p> <p>8 federal government that allowed -- or at least</p> <p>9 the license allowed me to design, build, and</p> <p>10 maintain TV stations' transmitters, that sort</p> <p>11 of thing.</p> <p>12 Q. And by your appearance here today,</p> <p>13 I'm assuming you know all about Tic-Tac-Fruit?</p> <p>14 A. Yes, sir. I designed it.</p> <p>15 Q. All right. And can you tell -- when</p> <p>16 you say you designed it, can you tell us what</p> <p>17 you did to determine the -- or to make the --</p> <p>18 I know you didn't physically make the cabinet,</p> <p>19 but the software that runs the computer</p> <p>20 program?</p> <p>21 A. The board that's in it, the computer</p> <p>22 board, I designed that particular board in</p> <p>23 1989. I designed the entire board myself, the</p> <p>24 computer, the way chips hook together, the</p>	<p style="text-align: right;">Page 161</p> <p>1 other states and jurisdictions; it really only</p> <p>2 had a home here, when the later features were</p> <p>3 added, were made to comply with Ohio law.</p> <p>4 Q. Many other states have laws that use</p> <p>5 definitions like "some skill"?</p> <p>6 A. That's correct.</p> <p>7 Q. I know that I've read that.</p> <p>8 A. That's correct.</p> <p>9 Q. And so Ohio would certainly be a</p> <p>10 standard we know that's a lot more than some</p> <p>11 skill?</p> <p>12 A. Right. The game was so skillful</p> <p>13 that it would not compete in states where they</p> <p>14 only required some skill.</p> <p>15 Q. Okay.</p> <p>16 A. Players wouldn't play it.</p> <p>17 Q. And it's my understanding that</p> <p>18 recently you have, besides building programs</p> <p>19 for -- what company are you currently</p> <p>20 president of that is involved with</p> <p>21 Tic-Tac-Fruit?</p> <p>22 A. I am chairman and CEO and owner of</p> <p>23 Pace-O-Matic, which is still a Wyoming</p> <p>24 S-corp., but we're based out of Atlanta.</p>

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<p style="text-align: right;">Page 162</p> <p>1 Q. And that company developed not only 2 Tic-Tac-Fruit but other gaming and/or 3 skill-based games? 4 A. I design different type games for 5 different jurisdictions, mainly in the United 6 States but in several other countries in the 7 world as well. 8 Q. And have you recently also been 9 qualified as an expert to testify on machines 10 such as this or any other games? 11 A. I recently represented the Georgia 12 Coin-Op Association in a criminal trial in 13 Cobb County, Georgia, which is metropolitan 14 Atlanta, where I was the expert for the 15 Coin-Op Association. 16 Q. And were you defined as an expert on 17 behalf of the court at that time? 18 A. Yes, sir. 19 Q. All right. And did you, just out of 20 curiosity, in that particular testifying, did 21 you find some games complied with Georgia law 22 and some did not? 23 A. We had 14 games that had been 24 seized, and at this trial, I found most of</p>	<p style="text-align: right;">Page 164</p> <p>1 you really don't know what you're going to get 2 at any one particular moment or one particular 3 play, but over an average you know exactly 4 what you're going to get. 5 Q. And where as slot machines, there's 6 -- and many of these poker machines and other 7 machines, there's a, it's a what I call a 8 random number generator or computer program in 9 there that tells me that Player 5 is going to 10 win and Player 10 is going to win and Player 11 20 is going to win, but all the other up to 20 12 are going to lose. Is that basically the way 13 it operates? 14 A. I don't think so. 15 Q. Okay. Well, tell me how it operates 16 then. 17 A. Which type of gambling device do we 18 want to talk about? 19 Q. The slot machine. 20 A. A slot machine. The earliest forms 21 of slot machines had mechanical reels, and 22 when the handle was pulled and released, all 23 three reels were spun and that there were 24 different timing gears put into them, slowly</p>
<p style="text-align: right;">Page 163</p> <p>1 them to be legal in Georgia, a couple of them 2 to be illegal in Georgia, and several of them 3 that I just could not make a determination as 4 to whether they were legal or not, just by the 5 way they were set up. 6 Q. Okay. In Ohio, the slot machine is 7 a machine that operates with less than 50 8 percent skill, we know, by definition. Can 9 you tell us why, when you go in and you play a 10 slot machine, that it's based on whether 11 you're the right person at the right time; can 12 you tell us why that operates that way, a slot 13 machine? 14 A. You mean why it's driven by chance? 15 Q. Correct. 16 A. Computers are incapable of 17 generating random numbers themselves, so we 18 call it a pseudo random number generator, but 19 it's essentially the same for this argument. 20 A computer does generate random 21 numbers which are applied in a basic slot 22 machine to randomize pictures, icons; they 23 even use random number generators in poker 24 machines to basically shuffle the deck. So</p>	<p style="text-align: right;">Page 165</p> <p>1 decayed down to where they plugged the pin 2 into a hole and stopped the reel into a slot. 3 But they didn't know where it was going to 4 stop. 5 But they knew by the orientation of 6 the symbols how many symbols are on each 7 particular reel as to how often a specific 8 pattern is going to come up. 9 In other words, we took a basic 10 simple slot machine where all three reels, 11 there was only one way to win, in the middle 12 line, and you took each reel, let's say each 13 reel has eight symbols on it, but I mean 14 there's only two different symbols. You put a 15 cherry and you put a lemon: cherry-lemon, 16 cherry-lemon, cherry-lemon, all the way around 17 each reel, so that each reel whenever it stops 18 has a 50 percent chance of landing on either a 19 lemon or a cherry. 20 Then every time that you pulled the 21 handle and released it, there's eight 22 different ways you can land. It could land 23 with either cherry-cherry-cherry, 24 cherry-cherry-lemon, cherry-lemon-cherry,</p>

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1 cherry-lemon-lemon, lemon-cherry-cherry,
 2 lemon-cherry-lemon, lemon-lemon-cherry, or
 3 lemon-lemon-lemon. There's eight different
 4 outcomes, which is two to the third power,
 5 which is the way that it's determined.
 6 You find out how many different type
 7 symbols can be in any one particular place on
 8 a reel. And you simply take, if all -- and
 9 you multiply that times the same on the next
 10 reels. So if you had three reels, it would be
 11 taken to the third power; two to the third
 12 power is eight combinations.
 13 So if you wanted to land on all
 14 three cherries, one out of eight times it's
 15 going to land on all three cherries, and one
 16 out of eight times it's going to land on all
 17 three lemons.
 18 That's the only time you're going to
 19 get all lemons or all cherries. And that's as
 20 simple as I can make it.
 21 Q. And now that's done all by computer?
 22 A. Absolutely.
 23 Q. All right.
 24 A. It's simulated in a computer to do

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1 exactly the same thing. You don't even have
 2 to -- you no longer have to worry about your
 3 virtual reels and what symbols are on it;
 4 that's unimportant. You simply got to know
 5 what the occurrence is of a particular symbol
 6 showing up in a particular place.
 7 You know that one out of two times
 8 you're going to get the symbol. Then if it's
 9 the same three reels, it's the same odds, two
 10 to the third power, one out of eight times
 11 you're going to achieve your pattern.
 12 Q. If I'm the best slot machine player
 13 or the worst slot machine player in the world?
 14 A. Yes, sir.
 15 Q. Am I going to get the same amount of
 16 money?
 17 A. Yes, sir.
 18 Q. All right. And why is that?
 19 A. Because no amount of skill or input
 20 to a slot machine is going to change the
 21 outcome of what happens. Now, you can hit the
 22 winner and get up and walk out the door before
 23 all the coins fell out and not get your win,
 24 but the machine would have paid.

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1 Q. But the player has no way to
 2 actively participate and affect the outcome?
 3 A. Of course. And the house is
 4 counting on that.
 5 Q. All right. Now, are there any trips
 6 or hidden devices in this particular machine
 7 or these machines that you developed that, if
 8 an operator wants to, can go in here and hit
 9 this switch and all of a sudden we have a
 10 poker machine; there's nothing hidden in
 11 there, is there?
 12 A. No, sir.
 13 Q. There's no ability to -- I mean, you
 14 could obviously pull out maybe some of the
 15 software and do some changes, but what I'm
 16 saying is, this particular program is run to
 17 only produce Tic-Tac-Fruit?
 18 A. The law in Ohio is very simple to
 19 me, it was very straightforward, clear as to
 20 what you had to do and not do. I set up the
 21 machine for Ohio with very few adjustments in
 22 it whatsoever, and none of those adjustments
 23 can an operator ever change that will affect
 24 the defense of a game in the state. That was

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1 on purpose. Because operators would, they'd
 2 get a hold of it and go out there and change
 3 something, and then we'd be in trouble.
 4 Q. So nobody can come in here and
 5 affect any of the changes on the machine, that
 6 you're aware of?
 7 A. No one can get into my setup screen
 8 and change anything which affects the defense
 9 of the machine. And why it is legal in the
 10 state.
 11 Q. I talked to Mr. Riedthaler earlier
 12 about the fact that how this machine played
 13 and the fact that there were 60,000 tiers.
 14 Now, can you explain the difference between
 15 tiers and cartridges -- or tiers and plays,
 16 excuse me.
 17 A. Yes. The way this machine is set up
 18 is that every single play that you make on the
 19 machine, the computer uses a finite structure,
 20 I don't think it's important we get into that
 21 at this point, but it basically assures that a
 22 complete set of permutations have been
 23 achieved before it starts back over.
 24 But the machine first determines

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<p style="text-align: right;">Page 170</p> <p>1 whether it's going to be a one-line winner, a 2 two-line winner, a three-line winner, or a 3 four-line winner. But it's set up and 4 weighted to where it averages a two-line 5 winner, exactly. So that you get so many 6 one-line winners, so many two-line winners, 7 three-line winners, and four-line winners. 8 But if you play it through the 9 entire set, which is 40 -- or 20 in this case, 10 you know that you have played 40 lines, so 11 that you know that you have played an average 12 of two tiers and lines per play. 13 Now, I took that and I said, well, 14 if we're going to do 30,000 plays in a 15 cartridge, in a finite cycle, then two is a 16 really good even number, it's an integer, it 17 makes the math very simple. I could very well 18 have had it 1.179 lines per play, but it 19 wouldn't have been near as simple to look at. 20 So then now I know if it's a 21 30,000-play-cycle cartridge, that it has to 22 eat through 60,000 tiers. So I put 60,000 23 tiers into it. 24 Q. And the cartridges we're talking</p>	<p style="text-align: right;">Page 172</p> <p>1 possible number of -- the computer goes ahead 2 and says we need this many fruit. But the 3 computer actually says, you know, I've got a 4 large number of plays to choose from, and I 5 said to Mr. Riedthaler 109 million because 6 that's what our mathematician advises. Would 7 109 million possible combinations be the 8 number that you're familiar with, give or 9 take? 10 A. What actually happens, Kurt, is 11 that there are eight different tiers or eight 12 different particular symbols that can appear 13 at any one of nine different spots. So the 14 math, again, is eight times eight times eight 15 times eight -- nine times, which is 16 134 million something. 17 But because of the algorithm that I 18 wrote, what the computer is told to do is, 19 once it determines which tiers and how many 20 lines that it's going to use, it constructs a 21 puzzle, it puts these tiers in there in a 22 specific way, but it can never have a winning 23 combination when it's first done, because that 24 would be against the law in Ohio. We have to</p>
<p style="text-align: right;">Page 171</p> <p>1 about, it's really no cartridge, it's what we 2 call a virtual cartridge? 3 A. Not physical. 4 Q. Correct, that's What I'm saying, 5 there isn't a particular cartridge, the 6 computer says there's -- 7 A. I call it a finite control 8 structure. That's my term for it. I actually 9 invented it. 10 Q. And Mr. Riedthaler called it a 11 cartridge; is that okay? 12 A. Yeah, absolutely. 13 Q. All right. Now, I know -- I don't 14 know if this machine has the exact same 15 number, but I know Tic-Tac-Fruit comes in 16 different versions, and I think the versions 17 on the street today would range anywhere from 18 30,000 plays all the way down to, what's the 19 smallest number, 2,500? 20 A. 2,500, yes, sir. 21 Q. So there may be some that are as low 22 as 2,500 out there, okay. 23 A. Correct. 24 Q. Okay. We also talked about the</p>	<p style="text-align: right;">Page 173</p> <p>1 make it so there are no winners when it 2 produces it. 3 If you subtract out all the possible 4 ways to have winning patterns on the screen 5 from the 134 million, you end up with 6 109 million. You have 109 million different 7 ways that the computer can arrange the symbols 8 on the screen, assuming there's eight 9 different symbols, which we've used in nine 10 spots, so that there is no winner off the bat, 11 the player is forced to make a decision, but 12 there's always at least one winning line in 13 there. 14 Q. The player can win each and every 15 time? 16 A. Yes, sir. 17 Q. All right. And a player could lose 18 each and every time if they're really bad? 19 A. Of course. 20 Q. If the machine operates in the time 21 and they make no pick, what happens? 22 A. On these machines here, if a person 23 does not pick and runs out of time, he cannot 24 possibly win that. We take the amount of the</p>

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<p style="text-align: right;">Page 174</p> <p>1 prize that he would have gotten, he would have 2 achieved if he had played it perfectly, and 3 throw it to the bonus. So that some other 4 player down the road could win that back if he 5 recognizes the best pattern and gets it in 6 time. 7 Q. So now if I press play and pick the 8 wrong location, which would be here, I have 9 now lost five cents on that play? 10 A. And it went to your bonus value. 11 Q. And it changed the bonus value up 12 here? 13 A. Yes, sir. 14 Q. Now, if you wanted to, I suppose you 15 could just let that bonus go to the operator, 16 but it's going back to give another player the 17 opportunity to win; is that correct? 18 A. That's correct. Some other player 19 can win that. 20 Q. So the player that lost, if he 21 wanted to play again, he still has the 22 opportunity to win that bonus then? 23 A. Yes, sir. 24 Q. Now, can you explain the difference</p>	<p style="text-align: right;">Page 176</p> <p>1 who's playing it. 2 If they had the time, if the 3 computer had decided that this was the time 4 that he was going to get the top tier, it 5 would put the top winning tier, in this case 6 what is that, titanium bars? 7 Q. Titanium bars it, looks like. 8 A. Okay, then there would be a winning 9 line somewhere on the screen with three 10 titanium bars with one of them replaced with a 11 benign symbol, one that didn't count. 12 Q. The wild card. 13 A. Then the computer would take the 14 other six places on the screen and start 15 filling them with symbols just below that, in 16 this case the spinner or the flip, thereby 17 trying to camouflage or hide from the player 18 the fact that the big one is in there. And 19 the higher the tier that you can win, the more 20 symbols are below it that the computer can use 21 to try to throw the player off. That was the 22 whole idea. We've tried to, you know, you've 23 got to find the big winner in there. 24 Q. So in your opinion, would it be more</p>
<p style="text-align: right;">Page 175</p> <p>1 between what I would consider a win that 2 occurs on here with three cherries and a win 3 that might occur up here with the higher 4 dollar value, and by that what I mean is, with 5 three cherries it appears to be a fairly 6 simple pattern. Is there a difference 7 between, in your opinion, the level of skill 8 that it takes to win at three cherries and the 9 level that it would take to win the titanium 10 bars? 11 A. Yes, sir. 12 Q. All right. Can you explain to the 13 Commission how that occurs? 14 A. To make it simple, we'll assume that 15 we're just talking about single-line winners. 16 If the computer has determined that 17 it's going to go a single-line winner, just 18 somewhere there's one line in eight different 19 ways that it's going to win and that it is 20 decided that it's going to be the bottom tier, 21 in this case cherries, then all it can do is 22 put the cherries in there and that's all it 23 can do. It cannot create alternative patterns 24 to try to screw -- to try to fool the player</p>	<p style="text-align: right;">Page 177</p> <p>1 difficult to win the higher tiers than it is 2 to win the lower tiers? 3 A. Absolutely, because the program that 4 I developed for it is over 6,000 lines along, 5 the algorithm, just to make the patterns, just 6 to put those symbols up there. It's told, 7 once it finds a place that it likes to put 8 that single-line winner, it then can put other 9 winning -- potential winning lines in there, 10 provided that if a player does find the right 11 spot to hit them. And he cannot win more than 12 guessing the correct answer. That's as simple 13 as the math is. 14 So the computer tries to fool the 15 player. In other words, he might see the one 16 under it and say, hey, there it is, he jumps 17 for it and hits it, he just screwed up, 18 because he missed the top one. So the 19 computer will let you -- it tries to hide 20 those, but it will let you win a pattern that 21 you weren't supposed to, provided that it has 22 less weight than the one that you're primarily 23 supposed to win. 24 Q. And is there any pattern of the --</p>

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<p style="text-align: right;">Page 178</p> <p>1 on this particular machine, 30,000, or out of</p> <p>2 the 109 million, is there any pattern out</p> <p>3 there that would allow for a winner being</p> <p>4 shown without a replacement?</p> <p>5 A. You mean where it throws a winner up</p> <p>6 there automatically?</p> <p>7 Q. Correct.</p> <p>8 A. Computer can't put a winner on the</p> <p>9 screen.</p> <p>10 Q. All right. And that's because your</p> <p>11 computer program, as written, won't allow it?</p> <p>12 A. It does seven different tests after</p> <p>13 it's decided on what the pattern is to make</p> <p>14 sure that doesn't happen. It makes sure that</p> <p>15 it did it right. If it doesn't, it starts</p> <p>16 back over.</p> <p>17 So it always presents illusion to</p> <p>18 the player. Otherwise, if it timed out, he'd</p> <p>19 have a winner of some sort. There's always a</p> <p>20 loser to the player. The player must make a</p> <p>21 decision in the nine squares. The different</p> <p>22 places he can touch generally have different</p> <p>23 scores to them. He's got to find the right</p> <p>24 spot to touch in a certain amount of time that</p>	<p style="text-align: right;">Page 180</p> <p>1 I was very happy about that. They brought</p> <p>2 Bill in, Bill Riedthaler. First time I met</p> <p>3 him. He's very knowledgeable, and he asked me</p> <p>4 questions about the game, and I fully</p> <p>5 explained every bit of this machine inside and</p> <p>6 outside.</p> <p>7 Q. Okay.</p> <p>8 A. Gave him my phone number where he</p> <p>9 could call me if he had any questions.</p> <p>10 Q. All right. Now, under the second</p> <p>11 box on the right-hand side of that screen?</p> <p>12 A. Yes, sir.</p> <p>13 Q. There is something that says game</p> <p>14 level 0.9500?</p> <p>15 A. Right.</p> <p>16 Q. Now, I believe Bill described that</p> <p>17 originally as if there's a 95 percent hold on</p> <p>18 the machine?</p> <p>19 A. Doesn't really work that way.</p> <p>20 Q. Can you explain what that is?</p> <p>21 A. .95 is a coefficient, which does</p> <p>22 represent 95 percent. This machine is</p> <p>23 hard-coded so that the best return the machine</p> <p>24 can make over the life of one single cartridge</p>
<p style="text-align: right;">Page 179</p> <p>1 gives him the highest score. And sometimes</p> <p>2 the spots don't score anything, before the</p> <p>3 time runs out, or he loses all of it.</p> <p>4 Q. All right. Mike, if you could stand</p> <p>5 up, and this is the machine we've kind of been</p> <p>6 looking at. There was a screen back in the</p> <p>7 menu that indicated what Mr. Riedthaler said</p> <p>8 was 95 percent?</p> <p>9 A. Yeah.</p> <p>10 Q. Can you get to that same screen?</p> <p>11 A. Sure. I showed that stuff to Bill a</p> <p>12 long time ago so he'd know where it was.</p> <p>13 Q. He indicated that to us.</p> <p>14 A. Yeah.</p> <p>15 Q. Let me just ask, while you're</p> <p>16 standing up there, you and Mr. Riedthaler met</p> <p>17 before?</p> <p>18 A. Absolutely. Very nice guy.</p> <p>19 Q. And you have tried to tell him</p> <p>20 everything you could about this machine?</p> <p>21 A. I was invited to show my game to the</p> <p>22 Canton City Police Department. By the time we</p> <p>23 showed up at the time, they had now changed it</p> <p>24 to the Stark County Sheriff's Department. And</p>	<p style="text-align: right;">Page 181</p> <p>1 is 95 percent of the money that went into it.</p> <p>2 Q. I'm going to interrupt you for a</p> <p>3 second --</p> <p>4 A. Only because of the finite structure</p> <p>5 of this setup. There's not a compensating</p> <p>6 algorithm.</p> <p>7 Q. If at the end of the cartridge?</p> <p>8 A. Yes.</p> <p>9 Q. Nobody has put another cartridge in</p> <p>10 place?</p> <p>11 A. Yes.</p> <p>12 Q. What happens to the machine?</p> <p>13 A. It quits playing.</p> <p>14 Q. All right. So it doesn't go on</p> <p>15 ad infinitum, correct?</p> <p>16 A. That's correct.</p> <p>17 Q. So there has to be effectively a</p> <p>18 replacement virtual cartridge for each and</p> <p>19 every series of plays?</p> <p>20 A. Yes, sir.</p> <p>21 Q. All right. Go ahead, continue on</p> <p>22 about that 95 percent.</p> <p>23 A. Okay. What that 95 percent means is</p> <p>24 that if a person, if you started off with one</p>

<p style="text-align: right;">Page 182</p> <p>1 cartridge, 30,000 plays, played all 30,000 2 plays absolutely correctly, got the best 3 answer, the nine spots, and all of those 4 30,000 times, which the odds are just 5 phenomenal on, the prizes that would have been 6 returned to the player over the amount of 7 money that was played would be 95 percent, 8 therefore affording the owner of the machine 9 at least to pay the electricity on it and make 10 money off it. 11 Q. All right. Now, in your opinion, 12 after reading Ohio statutes, is there anything 13 wrong with an operator making money from a 14 skill-based game? 15 A. No, sir. 16 Q. All right. Now, we know that the 17 maximum amount that the best player could win 18 is 95 percent. Do we know what the lowest 19 amount is? Because originally Mr. Riedthaler 20 indicated, I thought, that there was a hold, 21 and then when I asked him a series of 22 questions, he did indicate that he thought if 23 somebody lost each and every time, well, 24 obviously, the payout would be zero.</p>	<p style="text-align: right;">Page 184</p> <p>1 big winners, regardless of what his skill 2 level is. 3 If it then gets to the point where 4 it's the other way around, the machine is 5 taking in less money or has paid out too much 6 money relative to the money inside of it, it 7 quits giving a player good winners. So it's 8 always looking at that. 9 It's called a compensating 10 algorithm, so that if a player had no skill 11 and he was just up there bumming around and 12 touching buttons on the machine, after a 13 while, the machine is will say, hey, this guy 14 is not doing too good, I'm going to start 15 throwing him some big winners. Well, that 16 negates all of the skill for a machine. 17 A person at the end of the day gets 18 exactly the same amount of winnings as being 19 skillful as not being skillful, or even hiding 20 around the corner and hitting the button. 21 That's what Bill is used to seeing and why he 22 calls it a hold. This machine does not work 23 that way. 24 Q. All right. Tell us how it works.</p>
<p style="text-align: right;">Page 183</p> <p>1 A. Bill is very familiar with machines 2 that are out there, and most all of my 3 competitors' and most of the all the machines 4 before this do have a hold ratio on them. 5 They have what's called a compensating 6 algorithm. 7 Q. What's a compensating algorithm? 8 A. A compensating algorithm is a 9 program inside of a device that generally -- 10 inside of a device that looks like it's it has 11 skill but really doesn't. And that is a 12 device that looks at the amount of money into 13 the machine, the amount of money out of the 14 machine, and determines that as a ratio. And 15 you set up a machine with a compensating 16 algorithm to a hold ratio, like Bill was 17 talking about, say 50 percent. 18 Now, if the machine had \$1,000 had 19 gone into it and \$400 had gone out of it, the 20 computer is going to say, hmm, we have not 21 paid out enough money for what the hold 22 percentage is set to; therefore, the next 23 player or the next play after that or whatever 24 else, I'm going to give the player some really</p>	<p style="text-align: right;">Page 185</p> <p>1 A. Okay. This machine, like we said, 2 if a player hits the worst answer or the 3 several worst answers to any one puzzle, if 4 they pick the spot that does not return 5 anything, for all 30,000 plays of the 6 cartridge, this thing is paid zero. That 7 player gets nothing back. It cannot 8 compensate on a player and make a bad player 9 good. 10 Q. So, effectively, a bad player, or 11 the worst player possible, the worst 12 Tic-Tac-Fruit player in the world would make 13 zero dollars if he played all the way out? 14 A. That's correct. 15 Q. On most of the machines that have 16 compensating algorithms, the worst 17 Tic-Tac-Fruit player, if a machine had a 18 compensating algorithm, would make the same 19 amount as the best player? 20 A. He would make essentially the same 21 money that a skilled player would in exactly 22 the same amount over a larger amount of time. 23 Generally about an hour's time, the way 24 they're set up.</p>

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<p style="text-align: right;">Page 186</p> <p>1 The guy plays an eight-liner machine</p> <p>2 or whatever out there, which has a</p> <p>3 compensating algorithm, doesn't matter how</p> <p>4 good or bad he is, or any other type machine</p> <p>5 that has what I call pseudo skill or faux</p> <p>6 skill or whatever, that really doesn't apply</p> <p>7 to the outcome of the machine. But in the</p> <p>8 short time it looks good, but it doesn't</p> <p>9 really work.</p> <p>10 Q. So over the long term that somebody</p> <p>11 would play this machine, the amount of money</p> <p>12 they win is based -- if it's not based on a</p> <p>13 compensating algorithm, what's it based on?</p> <p>14 A. This machine is purely based upon</p> <p>15 the finite structures of the machine. It's</p> <p>16 predetermined winners all the way through it,</p> <p>17 depending on who gets what, when and where, 95</p> <p>18 percent of the money that goes into it is</p> <p>19 going to be returned.</p> <p>20 Q. If the player is right each and</p> <p>21 every time?</p> <p>22 A. If he's absolutely perfect, exactly.</p> <p>23 Q. If the player is not and is not</p> <p>24 skillful?</p>	<p style="text-align: right;">Page 188</p> <p>1 Q. The prize has no bearing on your</p> <p>2 particular, on the skill level of your</p> <p>3 machine? I'm going to withdraw that and ask</p> <p>4 this: It's correctly solving the puzzle?</p> <p>5 A. Yes.</p> <p>6 Q. The player has no bearing on the</p> <p>7 prize; they only have bearing on whether they</p> <p>8 can solve the puzzle?</p> <p>9 A. That's correct.</p> <p>10 Q. All right. You've reviewed the Ohio</p> <p>11 statute?</p> <p>12 A. Very many times.</p> <p>13 Q. Does it give a definition of prize?</p> <p>14 A. Yes, it does.</p> <p>15 Q. All right. And prize can be</p> <p>16 anything of value?</p> <p>17 A. Yes, sir.</p> <p>18 Q. All right. Is there a cap on the</p> <p>19 amount of money that can be paid out?</p> <p>20 A. No, sir.</p> <p>21 Q. Does the statute indicate --</p> <p>22 MR. LAMPKE: I'm going to object,</p> <p>23 Your Honor. The statute speaks for itself.</p> <p>24 We don't need the witness to testify about it.</p>
<p style="text-align: right;">Page 187</p> <p>1 A. Yes?</p> <p>2 Q. Then effectively --</p> <p>3 A. It could be anywhere from 0 to 95.</p> <p>4 Q. And we don't know?</p> <p>5 A. We don't know.</p> <p>6 Q. And we have no way to control that?</p> <p>7 A. We have no control over that. And</p> <p>8 the operator has no control over that.</p> <p>9 Q. That's my next question, all right.</p> <p>10 You can take a seat. Thank you.</p> <p>11 A. Thank you.</p> <p>12 Q. If the machine doesn't control 0 to</p> <p>13 95, who controls it then?</p> <p>14 A. The player.</p> <p>15 Q. All right. So the player controls</p> <p>16 the entire outcome on your machine?</p> <p>17 A. Absolutely.</p> <p>18 Q. And to you, what does the word</p> <p>19 "outcome" mean? Is it defined? Is outcome</p> <p>20 the amount of money that you win or lose, or</p> <p>21 is the amount -- or is it the --</p> <p>22 A. The outcome is whether you win or</p> <p>23 lose the game. The prize is independent of</p> <p>24 that.</p>	<p style="text-align: right;">Page 189</p> <p>1 CHAIRMAN MCNAMARA: It does.</p> <p>2 MR. GEARHISER: All right. No</p> <p>3 further questions.</p> <p>4 CHAIRMAN MCNAMARA: You may cross.</p> <p>5 - - - - -</p> <p>6 CROSS-EXAMINATION</p> <p>7 BY MR. LAMPKE:</p> <p>8 Q. Mr. Pace?</p> <p>9 A. Yes, sir.</p> <p>10 Q. My name is Matt Lampke.</p> <p>11 A. Hey, Matt.</p> <p>12 Q. Your area of designing machines is</p> <p>13 slot machines, generally, isn't it?</p> <p>14 A. Well, I started designing pure</p> <p>15 amusement machines.</p> <p>16 Q. Have you designed slot machines?</p> <p>17 A. Yes, I have. Well, okay, yes, I</p> <p>18 have. Yes.</p> <p>19 Q. And you designed this not to be --</p> <p>20 in an attempt not to be a slot machine,</p> <p>21 correct?</p> <p>22 A. That's correct.</p> <p>23 Q. There was a question regarding what</p> <p>24 happens to the money at the end of a cartridge</p>

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1 if there's money still left on the machine.
 2 Now, you don't design these to have an end
 3 point, do you? You don't design these so you
 4 don't have another cartridge of 10,000 game
 5 boards waiting, right? You design it so that
 6 you do have continuous play?
 7 A. A lot of times, the operators run
 8 the machine until it quits playing; the
 9 machine says it's out of plays, that's it.
 10 Q. Okay. And you normally have two
 11 cartridges, at least, in a machine?
 12 A. This particular game here had three
 13 cartridges at a time.
 14 Q. Okay. At the end of one cartridge,
 15 the first cartridge?
 16 A. Yes, sir.
 17 Q. If there's money still left on the
 18 board, what happens to that money when it goes
 19 -- when it completes the first cartridge and
 20 starts anew on a second cartridge?
 21 A. It just still has it left over from
 22 the previous cartridge.
 23 Q. So it carries over?
 24 A. Of course.

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1 Q. Okay. Now, you also talked about
 2 slot machines. A slot machine is not defined
 3 by one's ability to affect the winnings on the
 4 machine, is it?
 5 A. Could you rephrase that?
 6 Q. What is your definition of a slot
 7 machine under Ohio law?
 8 A. It is a device that does not have
 9 any skill, or at least having skill is not a
 10 requirement to be a slot machine.
 11 Q. Why don't I recite the definition
 12 for you.
 13 A. Okay.
 14 Q. It's any mechanical device capable
 15 of accepting anything of value from a player
 16 who gives a thing of value in the hope of
 17 winning a game, the outcome of which is
 18 determined largely or wholly by chance.
 19 A. Okay.
 20 Q. In that definition, there's no
 21 description of it's a slot machine if you win
 22 lots of money or lose lots of money, is there?
 23 A. I don't think so.
 24 Q. It's just a chance to win money,

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1 correct?
 2 A. Evidently.
 3 Q. You said there was an average of two
 4 tiers of line per play?
 5 A. Yes, sir.
 6 Q. And a player does not know that,
 7 correct?
 8 A. I don't believe that it's important
 9 that the player know that.
 10 Q. Okay. There's no instruction that
 11 tells them the average number of tiers?
 12 A. I don't know why it's important.
 13 Q. Answer my question, please.
 14 A. No, it does not tell them that
 15 there's two tiers.
 16 Q. How many game boards are on each
 17 cartridge in this machine?
 18 A. A game board is the physical
 19 components which allow the computer to
 20 operate.
 21 Q. Okay. So let me ask the question
 22 this way then: Tell me what that screen is up
 23 there on the left machine that shows the
 24 tic-tac-toe grid. What do you call that

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1 screen?
 2 A. A tic-tac-toe field.
 3 Q. Okay. How many tic-tac-toe fields
 4 are there per cartridge?
 5 A. The same number as the plays in the
 6 cartridge. 30,000 in this case.
 7 Q. 30,000?
 8 A. Yes, sir.
 9 Q. How many plays per cartridge does a
 10 player not receive more than the amount
 11 wagered?
 12 A. I'm sorry, I don't understand.
 13 Q. How many plays can a player not
 14 receive more than the amount that they wager
 15 on the machine?
 16 A. I still don't understand what you're
 17 saying.
 18 Q. Okay.
 19 A. How many plays?
 20 Q. How many tic-tac-toe fields per
 21 cartridge out of 30,000 can a player not
 22 receive more than the amount they wagered?
 23 A. You're talking about how many fields
 24 are there from the 109 million different

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<p style="text-align: right;">Page 194</p> <p>1 types?</p> <p>2 Q. No. You said there are 30,000</p> <p>3 fields of play?</p> <p>4 A. Correct.</p> <p>5 Q. Per cartridge?</p> <p>6 A. Right.</p> <p>7 Q. Of that 30,000?</p> <p>8 A. Yes.</p> <p>9 Q. How many of those plays can a player</p> <p>10 not receive more than they wagered, as a</p> <p>11 prize, as the outcome of the game?</p> <p>12 A. I don't think I've ever calculated</p> <p>13 that.</p> <p>14 Q. Okay.</p> <p>15 A. I could.</p> <p>16 Q. Would it be around 80 percent that</p> <p>17 they would not receive the amount -- more than</p> <p>18 the amount of their wager?</p> <p>19 A. I wouldn't think that that number is</p> <p>20 too far off.</p> <p>21 Q. Okay. Do you agree that the results</p> <p>22 of playing the game are determined by what</p> <p>23 prize that player receives?</p> <p>24 A. No. Winning the game is the task.</p>	<p style="text-align: right;">Page 196</p> <p>1 cartridges, so only two plays out of 60,000</p> <p>2 plays?</p> <p>3 A. That's correct.</p> <p>4 Q. Can you even attempt to get the</p> <p>5 grand prize?</p> <p>6 A. You are correct.</p> <p>7 Q. And a skilled player cannot win more</p> <p>8 than 95 percent of the amount that they wager</p> <p>9 per cartridge?</p> <p>10 A. If a person went through an entire</p> <p>11 cartridge. Now, if he were playing a</p> <p>12 cartridge after somebody else who had not done</p> <p>13 so well, then he would have significant amount</p> <p>14 of points built up in his accumulator to where</p> <p>15 he could actually end up better than 95</p> <p>16 percent.</p> <p>17 Q. Okay. But in your example where</p> <p>18 most of your vendors or permit holders let the</p> <p>19 machine die, essentially, and then call you up</p> <p>20 for replacement cartridge, when they're</p> <p>21 playing a cartridge, three cartridges, if a</p> <p>22 player plays all three cartridges, 90,000</p> <p>23 plays, they still are guaranteed to lose five</p> <p>24 percent, even the most skillful player?</p>
<p style="text-align: right;">Page 195</p> <p>1 Q. Okay.</p> <p>2 A. It is the puzzle itself that you</p> <p>3 win, and it's irrelevant to the prize.</p> <p>4 Q. Don't players play to obtain that</p> <p>5 grand prize of, on the left-hand machine</p> <p>6 there's \$250?</p> <p>7 A. Not everybody plays to hit the \$250</p> <p>8 prize. Certainly not everybody is going to.</p> <p>9 Q. And in fact only one person out of</p> <p>10 30,000 plays can a person even attempt to win</p> <p>11 that grand prize?</p> <p>12 A. You mean one play out of 30,000.</p> <p>13 Q. One play?</p> <p>14 A. On the average, that's correct. One</p> <p>15 out of the 30,000 plays is going to have that</p> <p>16 grand prize.</p> <p>17 Q. And you can't even attempt to get</p> <p>18 that grand prize in any of the other plays in</p> <p>19 that cartridge?</p> <p>20 A. If you were at the tail end of one</p> <p>21 cartridge and just beginning the next</p> <p>22 cartridge, you could have two big prizes</p> <p>23 within a couple of plays of each other.</p> <p>24 Q. Absolutely. But only two out of two</p>	<p style="text-align: right;">Page 197</p> <p>1 A. At least five percent they're going</p> <p>2 to lose. The skilled players are only going</p> <p>3 to lose five percent when they go through a</p> <p>4 cartridge. Depending upon their skill, they</p> <p>5 could lose 100 percent of it if they had no</p> <p>6 skill.</p> <p>7 Q. Do you have the source code for that</p> <p>8 machine?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Can you tell me what it is?</p> <p>11 A. Source code, it's written in C,</p> <p>12 primarily. I wrote the operating system in C,</p> <p>13 it was Soma assembler, the games are written</p> <p>14 entirely in C.</p> <p>15 Q. Do you have that code with you?</p> <p>16 MR. GEARHISER: Commissioners, at</p> <p>17 this point, there are trade secrets involved</p> <p>18 with that. It's a patented process, this</p> <p>19 particular machine has been applied for, a</p> <p>20 patent has been applied for, and I don't know</p> <p>21 that we can give this out to the public. If</p> <p>22 we want to do it in camera someplace, I might</p> <p>23 not object, as long as we'd have some written</p> <p>24 guarantee from the Attorney General's office</p>

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<p style="text-align: right;">Page 198</p> <p>1 that it would never leave their office.</p> <p>2 THE WITNESS: I don't have the</p> <p>3 actual source code. We have the object code</p> <p>4 that was compiled in the E-prompts, but that's</p> <p>5 not going to do what you want. I'll be more</p> <p>6 than happy to work with you in any way</p> <p>7 whatsoever with the source code, provided that</p> <p>8 counsel doesn't have a problem with it.</p> <p>9 MR. LAMPKE: Well, based on that</p> <p>10 objection, trade secret, I'm not going to try</p> <p>11 and get into that unless the Commission wants</p> <p>12 to.</p> <p>13 CHAIRMAN MCNAMARA: No.</p> <p>14 MR. LAMPKE: Okay. I just want the</p> <p>15 Commissioners to know that we don't have the</p> <p>16 ability to test some of these statements that</p> <p>17 are being made.</p> <p>18 BY MR. LAMPKE:</p> <p>19 Q. Can the operator of the machine</p> <p>20 increase the guaranteed return?</p> <p>21 A. No, sir.</p> <p>22 Q. Who can?</p> <p>23 A. Only I could. And I have to</p> <p>24 recompile the entire series in order to change</p>	<p style="text-align: right;">Page 200</p> <p>1 95 is the cap that's ever been done on a</p> <p>2 machine.</p> <p>3 Q. Do you have some in Ohio that are</p> <p>4 set at 94 percent?</p> <p>5 A. Anything played at a \$4.00 level in</p> <p>6 Ohio is all 94 percent.</p> <p>7 Q. So it is being adjusted on various</p> <p>8 machines in Ohio?</p> <p>9 A. No, sir. The amount that is</p> <p>10 returned to the player is based upon the</p> <p>11 maximum amount, and then it is scaled down</p> <p>12 based upon a lesser denomination being played</p> <p>13 on the machine.</p> <p>14 CHAIRMAN MCNAMARA: Let me see if I</p> <p>15 -- if I could interrupt you here a second.</p> <p>16 THE WITNESS: Yes, sir.</p> <p>17 CHAIRMAN MCNAMARA: You're saying</p> <p>18 that if all of your plays are \$4.00 plays?</p> <p>19 THE WITNESS: Yes, sir.</p> <p>20 CHAIRMAN MCNAMARA: You'll get back</p> <p>21 95 percent, or 94 percent?</p> <p>22 THE WITNESS: 94 percent, you're</p> <p>23 exactly right.</p> <p>24 CHAIRMAN MCNAMARA: Okay. Now,</p>
<p style="text-align: right;">Page 199</p> <p>1 it. It's set up that way on purpose, so that</p> <p>2 nobody can get in there and monkey with it and</p> <p>3 change it.</p> <p>4 Q. Do you have machines in Ohio that</p> <p>5 are set at different percentages than 95</p> <p>6 percent?</p> <p>7 A. The 95 percent return level applies</p> <p>8 to a \$4.00 play. The machine internally</p> <p>9 scales itself for different amounts of return</p> <p>10 based upon the denomination that they're</p> <p>11 playing.</p> <p>12 Q. Okay. If you could answer my</p> <p>13 question, though.</p> <p>14 A. Okay.</p> <p>15 Q. If I have all of your machines that</p> <p>16 are in Ohio in this room, and they probably</p> <p>17 couldn't fit in this room, would each machine</p> <p>18 have 95 percent in that top box?</p> <p>19 A. You may find it at 96 on later</p> <p>20 versions, but it's still only pays 95.</p> <p>21 Q. You do have --</p> <p>22 A. I don't think you're ever going to</p> <p>23 find anything other than 95 or 96. The 96 was</p> <p>24 set up -- in fact, 96 has never been rewarded.</p>	<p style="text-align: right;">Page 201</p> <p>1 suppose all of your plays are \$1.00, dollar,</p> <p>2 what percentage are you going to get back?</p> <p>3 THE WITNESS: They get 90 percent.</p> <p>4 CHAIRMAN MCNAMARA: 90 percent.</p> <p>5 THE WITNESS: Yes, sir.</p> <p>6 CHAIRMAN MCNAMARA: Suppose all of</p> <p>7 your plays are \$.50.</p> <p>8 THE WITNESS: They get back exactly</p> <p>9 87 percent. If they were to play at that one</p> <p>10 denomination throughout the life of the entire</p> <p>11 cartridge end to end.</p> <p>12 CHAIRMAN MCNAMARA: Okay. Thank</p> <p>13 you.</p> <p>14 BY MR. LAMPKE:</p> <p>15 Q. Now, you would agree with 109</p> <p>16 different --</p> <p>17 A. 109 million.</p> <p>18 Q. -- million different, what did you</p> <p>19 call them, tasks?</p> <p>20 A. Starting patterns with no winning</p> <p>21 lines.</p> <p>22 Q. Starting patterns, a player cannot</p> <p>23 even attempt to memorize those patterns,</p> <p>24 correct?</p>

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1 A. Well, a lot of them are mirror
 2 images of each other, it shifts around, but
 3 the whole object is to have a bunch of them in
 4 there to try to keep the players going.
 5 Q. So the image that appears on each
 6 wager when you hit the play button is
 7 different each time you play, correct?
 8 A. Yes, sir. I mean, it's possible
 9 that by now there's been some duplicate
 10 patterns.
 11 Q. But not on the same machine?
 12 A. It would be a long shot.
 13 Q. And the player does not control what
 14 pattern he or she receives?
 15 A. No, sir.
 16 Q. So your statement that the player
 17 controls 100 percent of the outcome of the
 18 game is not true, because we have at least one
 19 aspect that the player does not control,
 20 correct?
 21 A. Well, it does control the outcome of
 22 the machine. He has an opportunity, there's
 23 one spot that will give him the best possible
 24 return and other spots that will give him zero

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1 return.
 2 Q. Okay. Do you know of the definition
 3 of play under Ohio law?
 4 A. I don't think I could recite it to
 5 you, but a play is not -- is a single event as
 6 opposed to a contest, tournament, or --
 7 Q. Do you know what play consists of?
 8 A. You probably know better than me.
 9 Q. Do you know?
 10 A. Yeah, I think I do.
 11 Q. Okay. Can you please give me your
 12 best guess?
 13 A. I don't remember the language that
 14 they use.
 15 Q. Okay. So in your statement that the
 16 outcome of the game is totally controlled by
 17 the player is based on your lack of knowledge
 18 of Ohio's definition of play on a machine?
 19 A. I don't believe that to be correct,
 20 no.
 21 Q. Okay. Then how do they relate?
 22 A. I'm trying to understand where
 23 you're coming from. You say because the
 24 machine -- because the player does not get a

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1 chance to determine the pattern, that that is
 2 some criteria involved in the outcome?
 3 Q. No. I'm trying to find from you
 4 right now what entails that outcome based on
 5 Ohio's definition of play on the machine.
 6 A. I don't know.
 7 Q. Okay. Let's talk about the flip
 8 screen.
 9 A. Um-hmm.
 10 Q. What is it?
 11 A. It's a flip screen. It's just a
 12 bonus game that was put in there that they had
 13 to have achieved the skill of finding the
 14 normal pattern, and as opposed to giving them
 15 a specific prize for it, it gives them a prize
 16 they can change.
 17 MR. GEARHISER: Matt, I think, if
 18 you want, I know Bill Riedthaler couldn't do
 19 it, but I'm sure Mike, if you get on here, he
 20 can show you the flip, if that's going to help
 21 you.
 22 MR. LAMPKE: Would it assist the
 23 Commissioners?
 24 COMMISSIONER COLONNA: It would me.

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1 CHAIRMAN MCNAMARA: Okay.
 2 MR. LAMPKE: If you wouldn't mind
 3 calling up the --
 4 THE WITNESS: Let me see if I can.
 5 MR. LAMPKE: I know we can get the
 6 spinner in demo mode.
 7 (Discussion off the record.)
 8 THE WITNESS: No, I'm sorry. I
 9 don't have -- there's a special factory chip
 10 that just me and our distributor have that
 11 lets us demo that.
 12 BY MR. LAMPKE:
 13 Q. Is there a way to pull up the demo
 14 just so we can see the spinner image on the
 15 right machine?
 16 A. To get it back to play mode?
 17 Q. Yeah, demo mode, you have no wager
 18 in it.
 19 (Pause in proceedings.)
 20 A. There you go.
 21 Q. I don't think it's going to let us
 22 do it, because it wants to play and there's no
 23 cartridge in the machine.
 24 A. Okay. Yeah, we don't have a way of

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<p style="text-align: right;">Page 206</p> <p>1 loading the machine.</p> <p>2 Q. Okay, that's fine. How many times</p> <p>3 per cartridge will the flip screen appear, to</p> <p>4 your knowledge?</p> <p>5 A. I think it's around 100 -- about one</p> <p>6 out of every 150 plays, something like that,</p> <p>7 on this game.</p> <p>8 Q. It is a determined number, though?</p> <p>9 A. Well, because there's a certain</p> <p>10 number of tiers based upon the entire</p> <p>11 structure and the entire number of tiers</p> <p>12 divided by how many are in there are going to</p> <p>13 tell you how often it comes up.</p> <p>14 Q. Okay. But it is a definite</p> <p>15 calculable number?</p> <p>16 A. On the average, yes, sir. And you</p> <p>17 know how many flip screens you're going to hit</p> <p>18 within one finite cartridge.</p> <p>19 Q. Okay. Now, that adjust level, that</p> <p>20 2.48 percent or that .9 -- does that affect</p> <p>21 the flip screen, the bonus screens?</p> <p>22 A. Well, where we were a minute ago and</p> <p>23 what you're talking about, is that the machine</p> <p>24 is hard set, it's at 95 percent for \$5.00</p>	<p style="text-align: right;">Page 208</p> <p>1 and the setup level.</p> <p>2 Q. You said the operator could adjust</p> <p>3 something; what can they adjust?</p> <p>4 A. They can adjust a few things such as</p> <p>5 the base of the top bonus prize. Let's say</p> <p>6 that for a \$.50 play it was \$250.00; some</p> <p>7 places may want that to be \$300.00 or \$400.00</p> <p>8 or \$500.00; they could adjust that.</p> <p>9 They could also adjust how much from</p> <p>10 each play was contributed to it. They can all</p> <p>11 adjust these things within a plus or minus</p> <p>12 7 percent of the overall return to the player.</p> <p>13 And I have that feedback factor in</p> <p>14 there. The adjust level takes that number</p> <p>15 back into the flip games, because the flip</p> <p>16 game is a game that they don't know what you</p> <p>17 they're going to get out of it anyway,</p> <p>18 provided that they have obtained the right</p> <p>19 pattern, and then it adjusts the level of that</p> <p>20 game so that the overall machine still returns</p> <p>21 95 percent.</p> <p>22 That is the whole idea, is to give</p> <p>23 them some adjustments if they need them, but</p> <p>24 not allow them to change the 95 factor.</p>
<p style="text-align: right;">Page 207</p> <p>1 play, or 94 percent for a \$4.00 play.</p> <p>2 If they were to change, if the</p> <p>3 operator were allowed to change some of the</p> <p>4 parameters such as the amount of points that</p> <p>5 are contributed to the progressive or certain</p> <p>6 other adjustments, very minor ones, then they</p> <p>7 could change the overall payout of the device.</p> <p>8 And then the math, the computer calculates the</p> <p>9 new value that would come out, if it was left</p> <p>10 alone. And it has an error signal. You want</p> <p>11 to bring that screen back up?</p> <p>12 Q. Actually, you're talking about --</p> <p>13 A. The computer then says, well, he</p> <p>14 made a slight adjustment here so we're going</p> <p>15 to have to adjust it somewhere else so that it</p> <p>16 comes out the same.</p> <p>17 Q. You're talking about that screen,</p> <p>18 page 8 of Department's Exhibit D?</p> <p>19 A. Yeah. Right.</p> <p>20 Q. So the operator can adjust the setup</p> <p>21 level and the adjust level?</p> <p>22 A. The setup level. They cannot ever</p> <p>23 adjust the adjust level. The adjust level is</p> <p>24 simply the difference between the game level</p>	<p style="text-align: right;">Page 209</p> <p>1 Q. Now, once you're in the flip screen,</p> <p>2 does it matter what treasure chest a player</p> <p>3 flips over?</p> <p>4 A. No, sir.</p> <p>5 Q. Why not?</p> <p>6 A. Because it's not necessary for skill</p> <p>7 to be applied in that screen. Skill was</p> <p>8 necessary to get to that screen, so that</p> <p>9 screen is totally random and has nothing to do</p> <p>10 with skill.</p> <p>11 Q. So no matter what chest a player</p> <p>12 flips, the computer will stop when it has</p> <p>13 awarded what it wants to award to the player?</p> <p>14 A. Yes.</p> <p>15 Q. Okay.</p> <p>16 A. Instead of giving them a</p> <p>17 predetermined prize, if they get to that</p> <p>18 level, they get sort of a prize that they</p> <p>19 don't know what the level of it is.</p> <p>20 Q. Okay. So that then as well as a</p> <p>21 random feature of the game, in your words, so</p> <p>22 a player does not control the outcome of that</p> <p>23 screen, correct?</p> <p>24 A. Yeah, he controls the outcome of the</p>

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<p style="text-align: right;">Page 210</p> <p>1 screen by whether it's a winner or a loser.</p> <p>2 Q. Okay. But you just testified that</p> <p>3 the computer controls what prize they're</p> <p>4 getting, so it doesn't matter what --</p> <p>5 A. The computer determines the prize</p> <p>6 that they're going to get, providing that the</p> <p>7 player exercises the proper skill to determine</p> <p>8 the outcome of the game.</p> <p>9 Q. Okay. So if a player hits the lower</p> <p>10 -- I assume there are nine chests in a</p> <p>11 tic-tac-toe grid; is that accurate?</p> <p>12 A. That's correct, sir.</p> <p>13 Q. Okay. So if a player picks the</p> <p>14 lower right chest, the 50 one, he's a</p> <p>15 guaranteed winner, correct?</p> <p>16 A. I think you are correct. I think</p> <p>17 the very first one or two are always winners.</p> <p>18 Q. Okay. So a player could never lose</p> <p>19 by picking the first chest on that screen?</p> <p>20 A. The outcome of that particular</p> <p>21 screen is irrelevant. It's already been</p> <p>22 determined that the previous screen, the</p> <p>23 player had to win the game by finding the</p> <p>24 right spot to touch on the screen to determine</p>	<p style="text-align: right;">Page 212</p> <p>1 doesn't matter what icon they flip over?</p> <p>2 A. Possibly.</p> <p>3 Q. So there's no skill in choosing the</p> <p>4 treasure chest, because the outcome will be</p> <p>5 the same?</p> <p>6 A. That's correct.</p> <p>7 Q. Let's talk about the spinner screen.</p> <p>8 A. Yes, sir.</p> <p>9 Q. What is that?</p> <p>10 A. Spinner screen is essentially the</p> <p>11 same thing as the flipper screen, it's just</p> <p>12 done differently. Instead of awarding a prize</p> <p>13 for the correct outcome of the game, a</p> <p>14 definite number, it's simply a variable that</p> <p>15 they don't know till they finish playing the</p> <p>16 sub game.</p> <p>17 Q. So the spinner looks like spokes on</p> <p>18 a wheel?</p> <p>19 A. Spinner has a ball that rolls around</p> <p>20 it, and where you touch is irrelevant. They</p> <p>21 cannot determine where that ball is going to</p> <p>22 stop. That is its own finite structure. It</p> <p>23 has six, seven, eight, nine, ten as</p> <p>24 multipliers for what I call the spinner base,</p>
<p style="text-align: right;">Page 211</p> <p>1 the outcome of the game. Now, the prize</p> <p>2 simply wasn't predetermined in that case in</p> <p>3 that game. The prize could change. But the</p> <p>4 person still had to win the game in order to</p> <p>5 get there. This is just one of those bonus</p> <p>6 rounds that we give to them, because players</p> <p>7 like that.</p> <p>8 Q. And a player does not know that</p> <p>9 their first one or two choices, or any other</p> <p>10 choices, doesn't matter to them, correct?</p> <p>11 A. I still think it's irrelevant.</p> <p>12 Could have just awarded --</p> <p>13 Q. No, it's --</p> <p>14 (Multiple speakers.)</p> <p>15 Q. Answer my question, please.</p> <p>16 A. Yes, sir.</p> <p>17 Q. The player doesn't know that their</p> <p>18 choice is irrelevant?</p> <p>19 A. Anybody that plays it a while knows</p> <p>20 their choices are relevant in that game. It's</p> <p>21 just a fun game.</p> <p>22 Q. Okay. The average player off the</p> <p>23 street who plays it occasionally does not know</p> <p>24 that that bonus round is a random event and it</p>	<p style="text-align: right;">Page 213</p> <p>1 which is a base amount which accumulates based</p> <p>2 upon how long it's been since you've last been</p> <p>3 in that screen, and you have no effect</p> <p>4 whatsoever on the outcome of that game.</p> <p>5 It's a sub game, but you had to have</p> <p>6 won the game with the spinners, you would have</p> <p>7 had to have found the spinner icons and lined</p> <p>8 them up with the winning -- with the wild card</p> <p>9 symbol in order to be allowed to play that</p> <p>10 game. And again, instead of giving you a</p> <p>11 finite amount, a flat amount, a predetermined</p> <p>12 amount as a win, that one gives you a variable</p> <p>13 amount back.</p> <p>14 Q. So again, it's a random selection by</p> <p>15 the player, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And it doesn't matter what the</p> <p>18 player selects, the result has already been</p> <p>19 predetermined by the machine?</p> <p>20 A. That's correct.</p> <p>21 Q. So a player -- and I assume it's one</p> <p>22 through twelve, is the multipliers?</p> <p>23 A. No, the multipliers are six through</p> <p>24 ten.</p>

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<p style="text-align: right;">Page 214</p> <p>1 Q. Six through ten?</p> <p>2 A. And they're repeated twice.</p> <p>3 Q. Okay. So a player cannot skillfully</p> <p>4 choose a ten multiplier on that screen?</p> <p>5 A. No, sir. It's not necessary.</p> <p>6 Q. Correct, because the computer has</p> <p>7 already randomly selected what the result is</p> <p>8 going to be?</p> <p>9 A. The person has already determined,</p> <p>10 he's already found the pattern, he's already</p> <p>11 won the puzzle, and he has already solved that</p> <p>12 puzzle. We simply, instead of giving him a</p> <p>13 flat amount, we give him a little fun game,</p> <p>14 because he doesn't know what the amount is.</p> <p>15 The prize is independent of the outcome of the</p> <p>16 game.</p> <p>17 Q. What does a player receive from</p> <p>18 completing the screen task prior to going to</p> <p>19 the bonus screen? Pretend top left and top</p> <p>20 right are flip screens, okay?</p> <p>21 A. Yes, sir.</p> <p>22 Q. What is the prize that a player</p> <p>23 receives by putting the wild symbol in the top</p> <p>24 middle?</p>	<p style="text-align: right;">Page 216</p> <p>1 A. You could have had two-way,</p> <p>2 three-ways, you could have won something else</p> <p>3 in combination with it. In fact, occasionally</p> <p>4 you could get a flip and a spinner</p> <p>5 simultaneously.</p> <p>6 Q. Okay. How is the prize, the amount</p> <p>7 of the money determined in the flipper screen?</p> <p>8 Can you describe that again for us?</p> <p>9 A. Yes. It has to be a minimum -- it</p> <p>10 has a minimum amount that it has to give you,</p> <p>11 which is usually more than the tier that's</p> <p>12 directly under it, so that a player doesn't</p> <p>13 feel like he got less. Because if a person</p> <p>14 got the two flips on here, and here's the</p> <p>15 level of the flip, if there were two bells on</p> <p>16 there also, he'd better get back from the flip</p> <p>17 at least what he could have had from the bells</p> <p>18 if he had made that decision.</p> <p>19 Normally, if all the prizes are</p> <p>20 incremental value, they come up, they're at</p> <p>21 least twice as much as the previous symbol, so</p> <p>22 the person knows that getting three lemons is</p> <p>23 always at least as good as getting two lines</p> <p>24 of cherries. That's important in a person's</p>
<p style="text-align: right;">Page 215</p> <p>1 A. You're saying assuming that the flip</p> <p>2 is here and here?</p> <p>3 Q. Yes.</p> <p>4 A. If he puts a wild card in the</p> <p>5 middle, he's going to win a chance to go --</p> <p>6 it's going to take him to the spinner screen.</p> <p>7 Q. There's no prize that results from</p> <p>8 just completing this task?</p> <p>9 A. Yes. If you look on the help</p> <p>10 screen, help screen right here tells you,</p> <p>11 three cherries at this specific play level is</p> <p>12 going to get \$.05, \$.10, \$.15, \$.50, \$2.50.</p> <p>13 You do not know what your prize is going to be</p> <p>14 for the flip. You do not know what your prize</p> <p>15 is going to be for the spinner. You do know</p> <p>16 what the bonus is, because it's established</p> <p>17 right there.</p> <p>18 Q. Okay. So the prize is only</p> <p>19 determined once you get to that bonus screen?</p> <p>20 There's no prize for completing the task in</p> <p>21 the grid itself?</p> <p>22 A. You could have had other alternative</p> <p>23 winners.</p> <p>24 Q. Okay.</p>	<p style="text-align: right;">Page 217</p> <p>1 mind when he's solving the puzzle. And that's</p> <p>2 what the win chart is all about.</p> <p>3 Q. Does the amount wagered also</p> <p>4 determine the amount of the prize in any of</p> <p>5 the screens?</p> <p>6 A. There's generally a direct</p> <p>7 multiplier for all the prizes on the screen.</p> <p>8 Q. And if a person loses on a screen,</p> <p>9 does that money get applied to a bonus round,</p> <p>10 a portion of that prize get awarded to a bonus</p> <p>11 round for a subsequent win?</p> <p>12 A. The computer analyzes where the best</p> <p>13 spot is to touch and what you're going to win</p> <p>14 from that, if you successfully complete the</p> <p>15 play, what your prize is going to be. It also</p> <p>16 computes what prize you're going to get based</p> <p>17 upon the completion that you got, as an</p> <p>18 alternative prize. If it is less than the one</p> <p>19 you should have got, there's an imbalance</p> <p>20 there that it takes and throws to the bonus</p> <p>21 value for the next players.</p> <p>22 Q. Not only to the bonus but also to</p> <p>23 the flip and spinner?</p> <p>24 A. No.</p>

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<p style="text-align: right;">Page 218</p> <p>1 Q. I'm asking, is it applied?</p> <p>2 A. No. The flip and spinner, the</p> <p>3 spinner constantly increments based upon a</p> <p>4 setting in the machine on every play, with a</p> <p>5 proportional amount based upon the value of</p> <p>6 the play. The spinner does likewise.</p> <p>7 Q. So the amount wagered does have an</p> <p>8 impact on the payout?</p> <p>9 A. It is directly proportional, the</p> <p>10 amount that you play on the game and the</p> <p>11 amount that the prizes are awarded, correct.</p> <p>12 Q. The machine randomly selects the</p> <p>13 number of lines available per play?</p> <p>14 A. It's random with certain</p> <p>15 constraints.</p> <p>16 Q. Okay. The machine randomly selects</p> <p>17 the prize value to those lines on each play?</p> <p>18 A. Again, they're finite in the way</p> <p>19 that they're controlled, so that one gets</p> <p>20 running down lower, the other ones are going</p> <p>21 to get used more.</p> <p>22 Q. Okay. But it's randomly selected by</p> <p>23 the machine?</p> <p>24 A. That's correct.</p>	<p style="text-align: right;">Page 220</p> <p>1 the games per cartridge?</p> <p>2 A. No one is making anybody play it.</p> <p>3 Q. Is that statement true?</p> <p>4 A. Well, again, I'm not sure of which</p> <p>5 of the returns is an excess to the play, being</p> <p>6 as it is an irrelevant factor in Ohio law.</p> <p>7 I've never calculated how many of them on</p> <p>8 average return more than what was placed if</p> <p>9 the puzzle was successfully solved.</p> <p>10 Q. Well, you agree that it's an</p> <p>11 80 percent figure?</p> <p>12 A. Yeah, it could be anywhere from 70</p> <p>13 to 90 or something, I'd have to sit down and</p> <p>14 calculate, but you're probably very close.</p> <p>15 Q. So you agree with that previous</p> <p>16 statement then?</p> <p>17 A. Please rephrase it. And I</p> <p>18 apologize.</p> <p>19 Q. Players do not know that they're</p> <p>20 paying \$4.00 to play a 10-second game for the</p> <p>21 chance to win less than they wagered on</p> <p>22 80 percent of the game per cartridge?</p> <p>23 A. I have no idea how to predict what a</p> <p>24 player thinks or does not think or knows or</p>
<p style="text-align: right;">Page 219</p> <p>1 COMMISSIONER GARDNER: I need a</p> <p>2 clarification on that. So, in other words,</p> <p>3 three cherries, and that's the only thing you</p> <p>4 have, would pay out the same amount each time,</p> <p>5 or not necessarily?</p> <p>6 THE WITNESS: Every single time you</p> <p>7 get three cherries at one specific play level,</p> <p>8 it's always going to return the same amount as</p> <p>9 a prize.</p> <p>10 COMMISSIONER GARDNER: All right.</p> <p>11 Three lemons, three bells, the same way?</p> <p>12 THE WITNESS: They increment going</p> <p>13 up the chart.</p> <p>14 COMMISSIONER GARDNER: And then if</p> <p>15 you have combinations, you have two or three,</p> <p>16 like three lemons and three bells, that will</p> <p>17 pay out three bells, the three that's already</p> <p>18 a predetermined amount on that menu?</p> <p>19 THE WITNESS: Yes, sir.</p> <p>20 BY MR. LAMPKE:</p> <p>21 Q. So let me sum up the machine.</p> <p>22 Players do not know that they're paying \$4.00</p> <p>23 to play a 10-second game for the chance to win</p> <p>24 more than they wagered on only 20 percent of</p>	<p style="text-align: right;">Page 221</p> <p>1 does not know.</p> <p>2 Q. Well, you control the instructions</p> <p>3 on the machine, don't you, sir?</p> <p>4 A. Absolutely, I do.</p> <p>5 Q. Are players informed of this?</p> <p>6 A. There's a whole lot of things</p> <p>7 they're not informed about.</p> <p>8 Q. Are they informed of this?</p> <p>9 A. From the most informed --</p> <p>10 Q. My question sir, is, are they</p> <p>11 informed of this?</p> <p>12 A. No. I've not informed anybody of</p> <p>13 that fact.</p> <p>14 MR. GEARHISER: Until</p> <p>15 Tic-Tac-Fruit 2.</p> <p>16 THE WITNESS: Right. We may have</p> <p>17 that out there.</p> <p>18 CHAIRMAN MCNAMARA: Mr. Lampke,</p> <p>19 it's 13 minutes of 5. Can we recess by 5?</p> <p>20 MR. LAMPKE: I think I'm actually</p> <p>21 finished with my cross-examination.</p> <p>22 MR. GEARHISER: No redirect,</p> <p>23 Commissioners.</p> <p>24 CHAIRMAN MCNAMARA: Do you have any</p>

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<p style="text-align: right;">Page 222</p> <p>1 questions?</p> <p>2 -----</p> <p>3 EXAMINAITON</p> <p>4 BY COMMISSIONER GARDNER:</p> <p>5 Q. When we talked about the three</p> <p>6 titanium bars coming across, you said that's</p> <p>7 going to happen once in 30,000 fields?</p> <p>8 A. On that particular structure, yes,</p> <p>9 sir.</p> <p>10 Q. And if it happened once in 30,000</p> <p>11 fields, and let's say, I don't know if</p> <p>12 everybody knows that, but we know that now,</p> <p>13 maybe we're the only ones that know that, but</p> <p>14 then that would be a deterrent, would it not,</p> <p>15 if that was the big payout and that's what</p> <p>16 everybody was shooting for was that big</p> <p>17 payout, knowing full well that somebody hit it</p> <p>18 after the cartridge was only used for a few</p> <p>19 days or maybe 5,000 plays?</p> <p>20 A. You mean if the players knew that</p> <p>21 the big one was already gobbled up --</p> <p>22 Q. Exactly.</p> <p>23 A. -- into a finite structure, would</p> <p>24 they play it more? They have similar problems</p>	<p style="text-align: right;">Page 224</p> <p>1 and not really worrying about winning.</p> <p>2 Sometimes in other places people are</p> <p>3 more aggressive and they fight over trying to</p> <p>4 get in the seat and find the top prize.</p> <p>5 Q. And I think you answered this</p> <p>6 question for me already: So if you have four</p> <p>7 rows that are alike as opposed to one row</p> <p>8 that's alike, the amount of money that you're</p> <p>9 going to win in that row is more; if you have</p> <p>10 four rows that are alike, four lemons, four</p> <p>11 limes, whatever, that would be more --</p> <p>12 A. Are you talking about a four-line</p> <p>13 winner?</p> <p>14 Q. Right.</p> <p>15 A. A four-line winner can only achieve</p> <p>16 in one spot, in the middle of the screen.</p> <p>17 It's the place the four lines can have a</p> <p>18 common vertex. There's only one, and all the</p> <p>19 symbols cannot be the same, because then you'd</p> <p>20 have four winners already on the screen.</p> <p>21 Q. Right. But I'm saying, a four-line</p> <p>22 winner pays more than a three-line winner,</p> <p>23 depending what the icons are.</p> <p>24 A. On the average, yes, sir. Yes,</p>
<p style="text-align: right;">Page 223</p> <p>1 when we're talking about pull tabs. Again,</p> <p>2 that's a bad analogy, but --</p> <p>3 Q. And that's exactly the analogy I</p> <p>4 used earlier with Mr. -- whatever his name is.</p> <p>5 A. Riedthaler.</p> <p>6 Q. -- Riedthaler, that if you had in</p> <p>7 one box of pull tabs one 500 pull tab, 200</p> <p>8 pull tab, and that was pulled very early and</p> <p>9 they were in a crowded room of bingo players,</p> <p>10 nobody is going to go back to that box.</p> <p>11 A. There's more reasons to play it</p> <p>12 than going for the top winner. A lot of</p> <p>13 people just like playing the game. Certainly</p> <p>14 a lot of people are playing it hoping that</p> <p>15 they're going to go home with more than they</p> <p>16 started.</p> <p>17 Q. Right.</p> <p>18 A. But they don't necessarily chase</p> <p>19 the top prize. In fact, people in arcades</p> <p>20 generally like playing for seat time. We set</p> <p>21 them at lower denominations in arcades, and</p> <p>22 players like to come in in the afternoon and</p> <p>23 buy a couple hours sitting there playing the</p> <p>24 machine, knowing what it's going to cost them</p>	<p style="text-align: right;">Page 225</p> <p>1 absolutely.</p> <p>2 Q. Okay. And when you have that</p> <p>3 amount at the bottom that says you're going to</p> <p>4 -- you won a nickel or you won \$.20 or \$.40,</p> <p>5 there's no way for them to know that, it's</p> <p>6 predetermined, or can they go to the menu and</p> <p>7 find out that's what they're going to win?</p> <p>8 For instance, on a \$.50 bet if you get to</p> <p>9 three lemons -- can you go back to that one</p> <p>10 field, please?</p> <p>11 A. Yeah, and it will tell you what</p> <p>12 you're going to get.</p> <p>13 Q. It will tell you you're going to</p> <p>14 win \$.50.</p> <p>15 A. Yes, sir.</p> <p>16 Q. Or \$.25.</p> <p>17 A. If you're playing \$.50, the</p> <p>18 cherries returns a nickel, the lemons returns</p> <p>19 a dime, the oranges \$.15, plums \$.50, three</p> <p>20 bells \$2.50, and something, something,</p> <p>21 \$330.00.</p> <p>22 COMMISSIONER GARDNER: Okay. Thank</p> <p>23 you.</p> <p>24 THE WITNESS: Yes, sir.</p>

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<p style="text-align: right;">Page 226</p> <p>1 MR. LAMPKE: I have two follow-up</p> <p>2 questions, unless --</p> <p>3 CHAIRMAN MCNAMARA: Go ahead.</p> <p>4 - - - -</p> <p>5 FURTHER CROSS-EXAMINATION</p> <p>6 BY MR. LAMPKE:</p> <p>7 Q. How much do you average in profit</p> <p>8 per each machine?</p> <p>9 A. How much do I average, or the --</p> <p>10 Q. How much does each machine average</p> <p>11 in profit?</p> <p>12 A. Per what?</p> <p>13 Q. Per 30,000 plays.</p> <p>14 A. Oh, it would depend upon the</p> <p>15 denomination in which it were played at.</p> <p>16 Q. And that's why I'm asking for your</p> <p>17 average.</p> <p>18 A. I think the average would be -- the</p> <p>19 average would have been -- I think in Ohio is</p> <p>20 somewhere around \$1.75, I think is the average</p> <p>21 play. I think that's right. We don't</p> <p>22 necessarily collect that data from the</p> <p>23 operators who run it, but some of them tell</p> <p>24 us.</p>	<p style="text-align: right;">Page 228</p> <p>1 keeping \$3,000 per cartridge at a \$1.00 play</p> <p>2 level.</p> <p>3 Q. And you're assuming that every play</p> <p>4 is successfully completed?</p> <p>5 A. I'm assuming every play is</p> <p>6 successfully completed.</p> <p>7 Q. Okay. In your experience, is that</p> <p>8 the case, that every play is successfully</p> <p>9 completed?</p> <p>10 A. No, sir, it's not.</p> <p>11 Q. You're talking roughly \$3,000 profit</p> <p>12 per 30,000 plays, though?</p> <p>13 A. Per cartridge, yes, sir. About</p> <p>14 \$3,000 profit to the operator, which is</p> <p>15 generally split with the location.</p> <p>16 Q. 50/50 with the location?</p> <p>17 A. I don't do that. I know some do</p> <p>18 60/40s, 50/50s, 40/60s.</p> <p>19 Q. And how many machines have you</p> <p>20 produced for Ohio?</p> <p>21 A. About 900.</p> <p>22 CHAIRMAN MCNAMARA: Thank you, Mr.</p> <p>23 Pace.</p> <p>24 THE WITNESS: Thank you very much.</p>
<p style="text-align: right;">Page 227</p> <p>1 Generally, we run \$.50, \$1.00,</p> <p>2 \$2.00, \$4.00 plays. I think the average play</p> <p>3 is about a buck seventy-five. If a machine</p> <p>4 were played at \$1.00 all the way through,</p> <p>5 30,000 plays, the machine would return to the</p> <p>6 player 90 percent of the money at \$1.00. It</p> <p>7 is scaled on the inside to return 95 percent</p> <p>8 of the money to the player at a \$5.00 play</p> <p>9 level and 85 percent of the money at a quarter</p> <p>10 level.</p> <p>11 Q. I understand what they can make.</p> <p>12 But my question to you, though, is what's the</p> <p>13 average income?</p> <p>14 A. I'm going to figure out for you</p> <p>15 right here; one second.</p> <p>16 30,000 plays at \$1.00 plays means</p> <p>17 the machine brought in \$30,000. Not in</p> <p>18 reality, because it's recycled as you win and</p> <p>19 play. But let's say one cartridge brings in</p> <p>20 \$30,000, 30,000 plays. Now, we know that</p> <p>21 we're returning -- that the operator is</p> <p>22 getting to keep 10 percent of the money,</p> <p>23 because 90 percent of the money is going to be</p> <p>24 returned to the player, so an operator is</p>	<p style="text-align: right;">Page 229</p> <p>1 CHAIRMAN MCNAMARA: And with that,</p> <p>2 we stand adjourned.</p> <p>3 - - - -</p> <p>4 Thereupon, the proceedings were</p> <p>5 adjourned at 4:52 o'clock p.m.</p> <p>6 - - - -</p>

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CERTIFICATE

The undersigned do hereby certify that the foregoing proceedings were digitally recorded, electronically transmitted, and transcribed via audible playback, and that the foregoing transcript of such proceedings is a full, true and correct transcript of the proceedings as so recorded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Columbus, Ohio, on this ____ day of _____, 2005.

KIMBERLY S. PAYNE
Certified Digital Reporter
Notary Public - State of Ohio.
My commission expires October 26, 2009.

DONNA J. BELLOUS
Certified Digital Transcriber

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